

Report of the Conviction Integrity Unit
State v. Lamar Johnson, Case No. 22941-03706A-01



July 18, 2019

PLAINTIFF'S
EXHIBIT

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I. Summary

The overarching mission of the Circuit Attorney is to provide justice to the community. “(T)he duty of a prosecuting attorney is not to persecute, but to prosecute, and that he should endeavor to protect the innocent as well as prosecute the guilty. He should always be interested in seeing that the truth and the right prevail.” *Bailey v. Commonwealth*, 193 Ky 687, 237 Sw. 415, 417 (1922).

The Conviction Integrity Unit (hereinafter “CIU”) was established by Circuit Attorney Kimberly Gardner in 2017 and is tasked with reviewing old cases where credible claims of a wrongful conviction have surfaced. When the CIU investigates a potential wrongful conviction, it takes a look at all the evidence, both old and new. They may re-interview witnesses, consult with experts and use science and technology to evaluate the evidence. This may include forensic science like DNA, as well as social science research on issues like faulty eyewitness identification and false confessions.

It offends our most basic notion of fairness, and corrodes public confidence in the justice system for anyone to be imprisoned for a crime they did not commit or because they did not receive a fair trial. Prosecutors cannot ethically ignore credible claims of a wrongful conviction. The safety of the public is implicated by wrongful convictions as well—if the wrong person is convicted of a crime, the real perpetrator is free to commit other crimes. The Circuit Attorney takes these responsibilities and duties seriously.

In 2018, the CIU began its review of Lamar Johnson’s (hereinafter “Johnson”) case. Johnson was convicted in 1995 for the murder of Marcus Boyd (hereinafter “Boyd”). The CIU discovered errors so prejudicial that it is compelled to correct them, including:

- (1) the concealment of more than \$4,000 in payments to the sole eyewitness;
- (2) the failure to disclose the complete criminal and informant history of the State’s jailhouse informant;
- (3) the fabrication of false witness accounts during the law enforcement investigation used to provide a motive that did not exist;
- (4) the failure to conduct a thorough and competent investigation into the facts of the case;
- (5) the use of improper and unconstitutional police investigation tactics; and,
- (6) the presentation of false and misleading evidence to the jury and prosecutorial misconduct that further prejudiced Johnson and rendered the result of the trial fundamentally unfair.

The report below is the summary of the CIU’s investigation into Johnson’s case and provides the basis for the Circuit Attorney’s decision to take affirmative and official action to correct Johnson’s wrongful conviction.

II. The Crime and Background

On October 30, 1994, at approximately 9:00 p.m., Boyd and Greg Elking (hereinafter “Elking”) were sitting on the front porch of Boyd’s apartment at 3910 Louisiana Avenue when two black men wearing masks and dark clothing, each armed with a gun, ran up to the porch from the side of the house without warning. The black ski masks concealed all facial characteristics of the two men, except for their eyes. The masked assailants shot Boyd several times and he was pronounced dead shortly after arriving at the hospital.

After a short investigation, which will be summarized below, Johnson and Phillip Campbell (hereinafter “Campbell”) were charged with Boyd’s murder and armed criminal action.

On July 12, 1995, a jury returned a guilty verdict against Johnson. On September 29, 1995, Johnson was sentenced to life without the possibility of parole. Johnson is currently serving that sentence in the custody of the Missouri Department of Corrections.

III. Overview of Errors

The CIU discovered numerous errors, which undermine the integrity and reliability of Johnson’s conviction, including but not limited to the following:

- (1) The State, through Assistant Circuit Attorney (ACA) Dwight Warren, failed to conduct a competent investigation into the death of Boyd and engaged in serious prosecutorial misconduct throughout the case;
- (2) The only eyewitness to the crime, Elking, was paid to identify Johnson as one of the shooters. These payments, totaling more than \$4,000, as well as State’s assistance in the dismissal of numerous tickets were not disclosed to the defense;
- (3) Elking told St. Louis Metropolitan Police Department (hereinafter “SLMPD”) officers repeatedly, and on multiple occasions, that Boyd was murdered at night by two African-American males wearing ski masks covering all facial features except their eyes, and that these facts prevented him from being able to make an identification. Elking was unable to identify the perpetrators from a lineup containing Johnson three times, and Elking was only able to make an identification after officers told him which number to choose. Nonetheless, the prosecution proceeded to trial. Elking’s inability to identify the assailants was exculpatory and impeaching evidence and was not disclosed to the defense;
- (4) SLMPD officers engaged in a widespread falsification of witness statements to create motive evidence that did not exist. A thorough investigation revealed that these reports are false and witnesses deny making statements attributed to them in the police reports;
- (5) The State failed to disclose material impeachment evidence concerning jailhouse informant William Mock’s (hereinafter “Mock”) extensive criminal history, drug

- history, past history as an informant for the State, and the extensive assistance provided to Mock by the State, as well as Mock's racial animus toward African-Americans;
- (6) The State failed to correct false and misleading testimony from State witnesses, misled the jury, and otherwise engaged in misconduct that violated Johnson's constitutional rights;
 - (7) The actual perpetrators, Johnson's co-defendant Campbell and another man James "BA" Howard (hereinafter "Howard"), credibly confessed to the shooting of Boyd in signed sworn affidavits, personal writings dating back to 1996, and in interviews with counsel for Johnson and the CIU. Letters from Campbell denying Johnson's involvement were confiscated by and in the possession of the State, however, no action was taken to correct the wrongful conviction of Johnson; and,
 - (8) Johnson was tried before his co-defendant, Campbell. After Johnson trial, Campbell's counsel discovered the full extent of Mock's criminal history, which had not been disclosed to Johnson or his counsel. This evidence, along with Elking's refusal to assist with the prosecution of Campbell, forced the State to reduce the charges against Campbell. As a result, Campbell—one of the true perpetrators—was given a deal wherein he pled guilty to a voluntary manslaughter charge and received a sentence of seven years. As a result of errors outlined above, Johnson received a sentence of life without parole.

IV. The Police Investigation¹

The following summary is taken directly from the police report. Subsequent investigation by Johnson's counsel and the CIU indicates that critical aspects of the following account are largely false. However, for the purpose of summarizing the complete record, the law enforcement investigation as it existed in 1994-1995 is summarized below.

The police investigation commenced on October 30, 1994 and concluded on November 3, 1994. The lead investigator, Detective Joseph Nickerson of the St. Louis City Police Department, was assisted by Detectives Ronald Jackson (hereinafter "Detective Jackson"), Clyde Bailey (hereinafter "Detective Bailey"), Gary Stittum (hereinafter "Detective Stittum"), and Ralph Campbell (hereinafter "Detective Campbell").

A. The Police Are Informed of the Shooting and Respond to 3910 Louisiana

Law enforcement was notified of the shooting shortly after 9:00 p.m. on October 30, 1994. Officers arrived around 9:07 p.m. and found Boyd lying on his back on the front porch of his home at 3910 Louisiana Avenue. Several empty bullet casings were found on the front porch and in the front yard. Boyd was transported to St. Louis University Hospital and pronounced dead at 9:55 p.m.

¹ The citations in this section are to the police report.

Responding officers questioned Boyd's girlfriend, Leslie Williams², and neighbors living in the immediate vicinity. Leslie Williams was in the upstairs apartment when she heard gunshots. A handful of neighbors said they heard gunshots. One neighbor claimed to have seen two men running through the alleyway. Leslie Williams informed officers that a white man named "Greg" was on the porch when Boyd was shot. Leslie Williams knew "Greg" as a customer of Boyd's crack cocaine business.

The following report, dated October 30, 1994, indicates that Johnson was the primary suspect at the scene, before a single witness had been interviewed and before the only eyewitness, Elking, had been positively identified and located.

Scene Investigation:

FOUR 25 CAL. SHELL CASINGS WERE RECOVERED FROM THE FRONT PORCH AND ONE FROM THE FRONT LAWN AT 3910 LOUISIANA. ONE SPENT PROJECTILE WAS ALSO RECOVERED FROM THE FRONT PORCH. DURING THE COURSE OF THIS INVESTIGATION THE NAME OF LAMAR JOHNSON B/M 20 DOB 12/6/73 LID #232319 SURFACE AS A SUSPECT.

Followup: POST, LAB RESULTS, INTERVIEW ASSOCIATES AND FURTHER INVESTIGATION ON LAMAR JOHNSON. LOCATE AND INTERVIEW GREG HE ONCE WORKED WITH THE VICTIM AT SAYERS PRINTING CO. PH# 968-5400 EXT. 328. GREG LIVES ON BAMBURGER A FEW DOORS EAST OF CHIPPEWA.

(Police Report, p. 1)

Around midnight, Leslie Williams was transported to the station for questioning. There, Leslie Williams told Detectives Jackson and Bailey that she could not see the face of either shooter because they were both wearing some sort of mask or hood concealing their face. According to the police report, Leslie Williams then stated to the detectives that Johnson was the only person she knew of who had conflict with Boyd, so he may have been one of the shooters.

Boyd's mother, Tondaleria Boyd, was taken to the station for questioning at approximately 1:30 a.m. Tondaleria Boyd was not present at Boyd's apartment during the shooting. According to the report, he told officers that Johnson was the only person she knew of who had a problem with Boyd. She recounted that Johnson and Boyd had once lived together. According to Tondaleria Boyd, this problem stemmed from Leslie Williams telling Boyd that she did not want Johnson coming around anymore which offended Johnson.

B. Detective Nickerson Initiates His Investigation into Boyd's Murder

On the morning following the shooting, October 31, 1994, Detective Nickerson initiated his investigation into Boyd's murder. Detective Nickerson interviewed Ed Neiger (hereinafter "Neiger"), Dawn Byrd (hereinafter "Byrd"), Kristine Herrman (hereinafter "Herrman"), and Leslie Williams in connection with the Boyd homicide.

² Because there are multiple witnesses with the last name "Williams," those witnesses are referred to by first and last name throughout the report.

Ed Neiger

Detective Nickerson first interviewed Neiger after seeing his number on Boyd's pager which was recovered at the scene. According to the police report, Neiger told Detective Nickerson that he heard about the shooting from Byrd and Herrman but had no other information. Neiger stated that he knew both Boyd and Johnson, that Boyd and Johnson used to live together, and Neiger would occasionally buy drugs from them. It was rumored that Boyd and Johnson had recently gone their separate ways because of a disagreement over how the drug business was being handled. Neiger continued to buy from both Boyd and Johnson. When asked whether he knew of anyone who would want to hurt Boyd, Neiger stated, according to the report, that the only person who may want to harm Boyd was Johnson because he was unhappy about the split and more customers were dealing with Boyd.³

Neiger provided Detective Nickerson with Byrd and Herrman's contact information and stated that they may have more information because Byrd and Herrman were friends with both Boyd and Johnson. Finally, Neiger stated that he did not know anyone named "Greg" who was a friend or customer of Boyd's.

Dawn Byrd and Kristine Herrman

According to Detective Nickerson's narrative, Byrd stated that she knew both Johnson and Boyd. She was aware that the two used to live together and were partners in selling drugs, and she would buy small amounts of drugs from both of them. She thought Johnson and Boyd had parted ways but did not know why. She heard rumors that Johnson was selling bad drugs. Byrd confronted Johnson about the rumors during the late hours on October 29 or early morning hours on October 30. After a brief conversation, Johnson stated he was going to Boyd's apartment to speak with Boyd.⁴

³ Neiger was deposed by trial counsel on June 21, 1995. Neiger's deposition testimony directly contradicts this narrative in the police report:

Q. Do you know of any fight between Lamar and Marcus?

A. No, not of my knowledge. He wouldn't talk about anybody or --

Q. Do you know of anyone who would want to shoot Marcus?

A. No.

(1995 Neiger Deposition, p. 6).

⁴ Byrd was deposed by trial counsel on June 21 1995. Byrd's deposition testimony directly contradicts this narrative in the police report.

Q. Do you know of any fight between Lamar and Marcus?

A. No. I never saw them fight. I never saw them fight.

Q. Do you know why they stopped living together?

A. No, I did not know. []

Q. Did you have any specific disagreement with Lamar?

A. No -- well, the day before [Boyd was killed], the day before, yeah.

Q. What happened?

A. I told him to come to my house and Lamar and I had a discussion and that's it.

Q. What did the discussion involve?

However, Herrman went by Boyd's apartment that afternoon and Boyd's girlfriend stated that Johnson had not been by their apartment. On October 30, Byrd met Boyd at the National Grocery Store around 8:30 p.m. There, she told Boyd about Johnson selling one of her friends a burn bag. Boyd did not say much about it but mentioned that he had noticed Johnson's car around his house the past couple of days. Byrd then gave Boyd a ride home. As they were driving, Boyd thought he saw Johnson's car, but the car was out of sight before Byrd could confirm. Byrd then dropped Boyd off at home around 8:40 p.m.⁵

Herrman could not add anything to what Byrd stated but did confirm that she had gone by Boyd's apartment on Sunday afternoon and spoke with Leslie Williams. Byrd and Herrman told Detective Nickerson that they found out about the shooting shortly after it happened. Around 10:00 p.m. on the night of the shooting, they called Boyd's house and Leslie Williams informed them that Boyd had been shot while sitting on the front porch with a white guy that he used to work with. Neither Byrd nor Herrman knew a friend of Boyd or Johnson's named "Greg."

Leslie Williams

Detective Nickerson met with Leslie Williams again on November 1, 1994 around 7:00 a.m. Leslie Williams showed Detective Nickerson where she believed Elking resided. During the ride, Detective Nickerson interviewed her. Leslie Williams stated that she and Boyd met Johnson through her cousin, Pamela Williams, who had a child with Johnson. Boyd and Johnson were friends who had shared an apartment at one time. Boyd and Johnson were getting along well until a few weeks before the shooting.

According to the police report, Leslie Williams stated that Boyd felt Johnson had lied to him about money allegedly seized by police. Boyd did not confront Johnson about the lie; instead, Boyd decided to part ways. According to the report, Leslie Williams informed Detective Nickerson once more that Johnson was the only person she knew of that Boyd had any problems with, and that she would contact Detective Nickerson if she learned who was responsible for Boyd's death.

C. Detective Nickerson's Attempts to Locate the Only Eyewitness, Greg Elking

On November 2, 1994, at 9:15 a.m., Elking's sister contacted Detective Nickerson. She stated that Elking witnessed the shooting but was afraid that the men who killed Boyd were looking for him, or that the police might think he was involved in the shooting because he was the last person to speak to Boyd. Detective Nickerson informed her that Elking needed to contact police, and that Elking's identity would be protected.

A. Business.

Q. In the course of that discussion, did you and Lamar argue?

A. Yes -- well, I raised my tone of voice.

Q. Did this incident in any way involve Lamar and Marcus?

A. It had nothing to do with Marcus.

(1995 Byrd Deposition, p. 5-6).

⁵ This statement directly conflicts with the statements Elking and Leslie Williams reportedly gave to police about how Boyd returned home on the evening of October 30, 1994.

Around 11:30 a.m., Kelly Elking, Elking's wife, contacted Detective Nickerson. Kelly Elking told Detective Nickerson that Elking was scared because he had witnessed the shooting and the gunmen saw him. Detective Nickerson told Kelly Elking that it was imperative for Elking to come forward and provide a statement. Kelly Elking stated that she would contact Elking in attempt to convince him to come forward.

D. Elking Contacts Detective Nickerson and Agrees to View a Photo Array

On November 3, 1994, Elking contacted Detective Nickerson. Elking confirmed he was present on the porch when Boyd was shot. Elking stated that each subject was armed with a gun, one subject was about 5'9" and the other was "taller," and both were wearing dark clothing and masks that only exposed the nose and eyes.

Around 2:00 p.m., Elking met Detective Nickerson at a local diner. Elking's wife, Kelly Elking, was also present. Elking stated that he had gone to Boyd's apartment to repay a \$40 drug debt. As Boyd and Elking talked on the front porch, two black men, dressed in dark clothing and wearing masks, ran up to the porch. One subject appeared to be about 5'9, tall and slim built, ran past Elking and directly toward Boyd. The second subject, who was about 6 feet tall, grabbed Elking by the arm and told him to "Get the fuck up!" As Elking turned toward Boyd, gunman #1 shot Boyd. Gunman #2 then ran up to Boyd and fired another shot. The gunmen fired several more shots into Boyd and then fled the scene, leaving Elking unharmed. Afraid the gunmen would return to kill him, Elking ran home and told his wife about the shooting. Elking and his wife left their home and went to stay at Elking's sister's home, where Elking remained after the shooting.

Detective Nickerson asked Elking if he could identify the subject through photographs. Detective Nickerson then presented Elking with five department Law Enforcement Identification (LID) photos. Johnson and Campbell were included in the five-photo array. According to the police report, Elking told Detective Nickerson that they eyes of the photo of Johnson looked similar to the eyes of one of the gunmen. Elking refused to sign or initial the back of Johnson's photo, which Detective Nickerson explained was the result of fear for himself and his family. Finally, Elking informed Detective Nickerson that he was unsure whether he would assist the State in its prosecution but was willing to view lineups.

E. Johnson is Apprehended

After the interview with Elking on November 3, 1994, Detective Nickerson told Dwight Warren (hereinafter "Warren"), Chief Warrant Officer of the Homicide Warrant Section, that Johnson had been identified as one of the shooters. At approximately 4:30 p.m., a "wanted for questioning" was issued for Johnson. Around 5:45 p.m. that same day, Detectives Bailey and Stittum arrested Johnson and Campbell.

F. Johnson's Initial Statements to Detective Nickerson

Around 6:15 p.m. on November 3, 1994, Detective Nickerson informed Johnson that he was a suspect in the Boyd homicide. Johnson waived his Miranda rights and agreed to speak with

Detective Nickerson. Johnson denied any involvement in the crime and told Detective Nickerson that Boyd was his friend and that he'd "been with his girlfriend on Lafayette" when the shooting occurred.

G. Detective Campbell Questions Johnson

Detective Nickerson informed Detective Campbell that Johnson was in Interview Room #2 and was a suspect in the Boyd murder. Detective Campbell requested to speak with Johnson about an unrelated matter. While questioning Johnson about matters unrelated to the Boyd homicide, Detective Campbell claimed Johnson made an incriminating statement. The following is taken directly from Detective Campbell's police report narrative:

"I shouldn't have let the white guy live." Detective Campbell asked Lamar J. what he was talking about. Lamar J. without hesitation, stated, "Man there's a witness. I should have never let the white guy live." Detective Campbell again asked Lamar J. what he was talking about. Lamar J. stated he was talking about the shooting of Markus Boyd. Detective Campbell advised Lamar J. that he was not questioning him about the Markus Boyd homicide. Lamar J. went on to state without any further questioning by Detective Campbell, "Man, Markus and I used to be friends, now I'm fucked. Why did I let the white guy live." Detective Campbell proceeded to ask Lamar J. if he wanted to make a statement to the investigating detectives relative to the Boyd homicide, Lamar J. stated, "No, we're fucked, I let the white guy live." Detective Campbell at this time terminated the interview with Lamar J. and advised Detective Nickerson of Lamar J.'s statement."

(Police Report, p. 47).

H. Detective Nickerson Attempts to Locate Elking to View the Lineups

From approximately 6:50 p.m. to 8:30 p.m. on November 3, 1994, Detective Nickerson made several attempts to locate Elking. Around 8:30 p.m., Detective Nickerson contacted Elking's sister to inform her that he was trying to locate Elking for purposes of viewing lineups. Around 9:00 p.m., Elking contacted Detective Nickerson. Detective Nickerson asked Elking to come to the station to view the lineups. Detective Nickerson picked Elking up and drove him to the station. Detective Nickerson interviewed Elking during transport to police headquarters.

I. The Lineups and Elking's Identification

Detective Nickerson presented Elking with two lineups on November 3, 1994. Johnson was placed in the first line up (lineup #1) and Campbell was placed in the second lineup (lineup #2).

Lineup # 1 commenced at 9:56 p.m. Johnson was in position #3. Elking viewed the lineup twice and could not make an identification.



During Elking's third viewing of lineup #1, each person was instructed to repeat "Get the fuck up!" Elking then identified position #4, Donald Shaw, a filler from the holding tank of the jail. as one of the masked assailants.

Lineup # 2 commenced at 10:18 p.m. Campbell was placed in position #4. Elking was unable to make an identification in lineup #2.



According to the police report, as Detective Nickerson escorted Elking back to the Homicide Unit on the fourth floor, Mr. Elking stated:

“Officer you know, I want to do the right thing, but I’m scared. I have to worry about my family. All of this is happening too fast. I need time to think about what I should do. I want to do the right thing.” Then, upon arrival to the fourth floor, in the presence of Detectives Stittum, Bailey and Nickerson, Mr. Elking stated “You guys know I lied, I don’t know how you could tell but you all knew I was lying when I picked the wrong guy.” The guys that shot Markus were #3, in the first lineup and #4 in the second lineup. I could tell for sure it was #3 in the first lineup when I seen his lazy left eye. I know it was #4 in the second lineup when I seen the scar over his right eye.”⁶

(Police Report, p. 49-50).

Johnson and Campbell were escorted to booking and were informed that a witness had identified them as being responsible for the death of Boyd. Johnson and Campbell declined to make a statement at that time.

On the morning of November 4, 1994, Detective Nickerson drove Elking to the St. Louis Circuit Attorney’s Office where Elking was presented to Warren. After interviewing Elking, Warren issued warrants for Johnson and Campbell charging them with Murder First Degree and Armed Criminal Action.

J. Jailhouse Informant William Mock’s Account of a Conversation Johnson Allegedly had at the St. Louis City Jail

Mock was being held in the St. Louis City jail. On November 5, 1994, Mock informed Detective Jackson⁷ that he overheard a conversation among three inmates regarding the murder of Boyd.

⁶ No prior reference to either a lazy eye or a scar can be located in the police narrative summarizing prior interviews with Elking. The first recorded reference of either a lazy eye or a scar occurs after Elking viewed the lineups despite at least two telephone calls and two interviews with Detective Nickerson prior to that point in the investigation. It should be noted that Johnson has never been treated for a lazy eye, photographs—past and present—do not depict a lazy eye, and the CIU, when interviewing Johnson in person, did not detect a lazy eye.

⁷ Detective Ronald Jackson was charged by federal indictment on October 8, 2009, for his leadership role in a criminal scheme to steal seized property from persons he arrested. *See United States v. Ronald Jackson et al.*, Case No. 4:09-CR-00650-RWS. *See also United States v. Jackson*, 639 F.3d 479 (8th Cir. 2011) (“[A]n addendum to Jackson’s Presentence Investigation Report (PSR) remarked that “Jackson had engaged in this type of illegal activity for quite some time, and he purposely conducted this type of illegal business armed with a weapon in order to intimidate the victims.” Addendum to PSR at 1.”)). Detective Jackson’s 2009 criminal conduct occurred after his involvement in Johnson’s case; however, in line with *Engel v. Dormire*, the CIU considered all the evidence now known, including the subsequent criminal conduct of Detective Jackson. 304 S.W.3d

The next day, November 6, 1996, Mock spoke with Detective Jackson again claiming to have overheard yet another conversation regarding the Boyd homicide. Mock stated that he overheard Johnson and Campbell discussing their involvement in Boyd's shooting, as well as an unrelated homicide (that police could never find any record of). In a recorded interview, Mock alleged that Johnson and Campbell admitted to shooting Boyd and discussed "taking care of the white boy" to cover their tracks. Additionally, Mock stated that Johnson and Campbell also talked about a robbery and a murder they committed "on the Southside." Mock repeated this statement to Detective Nickerson on November 7, 1994.

V. The Trial⁸

The following summary is taken directly from the trial transcript. Subsequent investigation has uncovered substantial evidence that raises overwhelming concerns about the truthfulness of significant portions of the trial testimony. However, for the purpose of summarizing the complete record, the evidence presented at Johnson's 1995 trial is summarized below.

The trial was held before the Honorable Booker T. Shaw on July 11-12, 1995. Assistant Circuit Attorney Dwight Warren (hereinafter "Warren") represented the State and David Bruns (hereinafter "Bruns") of the Public Defender's Office represented Johnson.

A. State's Opening Statement

Warren began by explaining that on October 30, 1994, Elking was visiting Boyd at Boyd's home not because he was a drug user, but because "he owed [Boyd] some money, about forty bucks[.]" (Trial Tr., p. 149). As they were sitting on Boyd's porch around 9 p.m., two men appeared from the side of the building. Both immediately targeted Boyd and started shooting. They were both wearing "ninja-type hoods" with "the front of the face [] open but the sides [] closed[.]" (Trial Tr., p. 150). Elking got "a good look" at both of the men. *Id.*

Elking ran and subsequently got "in touch with the police department," which was also looking for him after learning from Boyd's girlfriend that he was at the home during the shooting. *Id.* Elking looked at some photographs and picked out Johnson and Campbell as the shooters but did not identify them to police. (Trial Tr., p. 150-151). After viewing two different live lineups, one with Johnson and the other with Campbell, Elking did not make an identification. However, as Elking prepared to leave the police station, he explained to Detective Nickerson that he did see the shooters in each lineup. He was "positive that Lamar Johnson [was] the one that [he] saw." (Trial Tr., p. 151).

Warren told the jury that on August 17, 1994, more than two months prior to the murder, Johnson's car was searched by St. Louis Police Department detectives. In it they found a "black ninja-type

120, 126 (Mo. 2010). His federal indictment and subsequent guilty plea cast serious doubt on his character of truthfulness and credibility as a witness for the State.

⁸The trial testimony of relevant witnesses is summarized in this section. Redundant testimony or testimony that is unnecessary to the issues raised in this report is not included.

hood, the same that was used” in the Boyd shooting. (Trial Tr., p. 152). The hood was taken into custody of the St. Louis Police Department and, after the murder, Elking identified it as the same type used by the Boyd shooters.

After Johnson was arrested on November 3, Detective Campbell interviewed him about an unrelated matter. During the interview, Johnson said that he used to be “great friends” with Boyd and he “fucked up and let the white boy live.” *Id.*

On November 5, Detective Jackson received a call from Mock, who requested to be brought up from the jail to speak with someone in the homicide department. He told Detectives that he did not “want any special consideration” and just wanted to “tell [them] what [he] heard.” (Trial Tr., p. 153). Mock then went on to state that he overheard Johnson and Campbell speaking in the holding cell about how they needed to “kill the white boy” because that was the only thing the police had on them. *Id.*

Warren concluded his opening by recounting the State’s version of events occurring on November 6, 1994. Mock once again phoned the homicide detectives, stating he had heard more conversations between Johnson and Campbell in which they further discussed “kill[ing] the white boy” because he “can finger us.” (Trial Tr., p. 153-54).

B. Defense’s Opening Statement

Bruns began his opening statement by recounting Johnson’s alibi: He was at 3907 Lafayette with his girlfriend, Erika Barrow (hereinafter “Barrow”), during the murder. (Trial Tr., p. 154-55). While at Farrow’s house, Johnson was paged and responded to the page by entering into a three-way call with Pamela Williams and Leslie Williams, the latter of whom was Boyd’s girlfriend. (Trial Tr., p. 155). It was during this call that Johnson first learned of Boyd’s murder. *Id.*

Bruns also asserted that testimony would reveal Mock, Campbell, and Johnson were never in the same holding cells. *Id.* Further, Bruns said pictures would show that there were numerous people filling the cells between the three men, making it impossible for Mock to have overheard what he claimed. *Id.*

C. The State’s Case

Greg Elking

Elking testified that he occasionally bought drugs from Boyd, and that on the day of the murder, he owed Boyd \$40. (Trial Tr., p. 157). On October 30, 1994, Elking went to Boyd’s apartment to see if he could get a ride to work on the following Monday. (Trial Tr., p. 158). When there was no answer at the door, he waited for a short time and then Boyd, his girlfriend Leslie Williams, and their child arrived. *Id.* Boyd told Elking to wait on the porch while he helped Leslie Williams and their child into the upstairs apartment. *Id.* Boyd returned to the porch and Leslie Williams and their child stayed inside. *Id.*

As Boyd and Elking sat on the porch talking, two men with solid black “pullover[]” masks came from the side of the building, each holding a gun. (Trial Tr., p. 159). The masks covered the faces of both men, except for the area from “the nose to the forehead,” which left just the eyes exposed. *Id.*

One of the men approached Elking directly and ordered him to “get the fuck up.” (Trial Tr., p. 160). Elking noted that the man had a lazy eye, as he was staring right at Elking. *Id.* Elking identified Johnson in the courtroom as the man with the lazy eye, over the defense’s objection. (Trial Tr., p. 160-61).

The other gunman pinned Boyd down on the porch and shot him. (Trial Tr., p. 163). The lazy-eyed gunman then shot Boyd as well, firing the shot into Boyd’s side. *Id.* In total, there were “five or six” shots fired, though Elking could not identify the source of each shot. (Trial Tr., p. 164).

After shooting Boyd, the gunmen went down the stairs and pointed their guns at Elking before fleeing the scene from the same way they initially appeared. (Trial Tr., p. 164-65). Before they fled, Elking got a good look at the other gunman and subsequently picked him out of a lineup. (Trial Tr., p. 165). As soon as they left the scene, Elking ran straight home and told his wife what he had witnessed. (Trial Tr., p. 165-66).

Elking did not call the police that night because he was scared and in shock. (Trial Tr., p. 166). After he heard from his sister that the police were looking for him, he called the detectives, and they met in person shortly thereafter. He was shown four or five photographs during that meeting and identified Johnson in one of the photos. (Trial Tr., p. 167-68). Elking refused to initial the back of the photo at the time because he was “scared to sign anything or admit to anything at that point.” (Trial Tr., p. 168).

Later that evening, Elking viewed a lineup at the police station with Detective Nickerson. He initially identified someone in the lineup that was not Johnson because he “had thought about goin’ ahead and backing out of th[e] whole thing.” (Trial Tr., p. 170). After leaving the room, he revealed to Detective Nickerson that he had identified the wrong person. (Trial Tr., p. 170-71). He initially made a false identification because he was intimidated by the men in the lineup. (Trial Tr., p. 171).

Elking also viewed a second lineup and identified the other gunman who was the first to pull the trigger on Boyd. (Trial Tr., p. 172-73). That second gunman was Campbell. (Trial Tr., p. 174). Elking was then shown the mask retrieved from Johnson’s car in August 1994 and identified it as the same type worn by the shooters during the murder. (Trial Tr., p. 176).

On cross-examination, defense counsel began by questioning the integrity of the two lineups viewed by Elking, noting that he had previously been shown photos of both Johnson and Campbell, but none of the other men in either lineup. (Trial Tr., p. 177-78).

During Elking’s first meeting with Detective Nickerson, when he was shown the photographs, Elking “didn’t want to commit to” making any positive identification of the shooters. (Trial Tr., p. 179). He was called by Detective Nickerson that same evening, and taken to the station to view a

lineup. (Trial Tr., p. 182). He walked away from the first lineup twice, unable to make an identification. (Trial Tr., p. 183).

During Elking's first meeting with Detective Nickerson, Elking identified one gunman as being 5'9" with a slim build, and the other as 6'0". That was the only description he gave of the individuals, besides the fact that one of the men had a lazy eye.⁹ (Trial Tr., p. 186-88).

Elking brought a bag of things, including an answering machine to Boyd's apartment on the night of the murder. (Trial Tr., p. 189). He left the bag on the porch when he fled the scene. *Id.* The shooters did not take the bag or anything off Boyd's body, so it did not appear to be a robbery. *Id.*

It was dark outside at the time of the shooting, and the only light came from inside the house. (Trial Tr., 189-90). Elking could not make out most of the shooters' features, such as their hair length, whether they had facial hair, or whether either had gold teeth. (Trial Tr., p. 190).

On redirect examination, Warren reiterated that the photos presented to Elking during his first meeting with Detective Nickerson did not contain names of any of the pictured individuals, and Elking had never heard Johnson's name prior to his involvement in the case. (Trial Tr., p. 191). His identification of Johnson came not just from the lazy eye, but also Johnson's height and build. (Trial Tr., p. 192).

Clyde Bailey

Detective Bailey was in the Homicide Section of the St. Louis Police Department at the time of the murder. (Trial Tr., p. 205). On August 17, 1994, he spoke with Johnson at 4100 Lafayette and searched the trunk of Johnson's car. (Trial Tr. p, 205-06). Inside, he found the black mask which had earlier been shown to Elking while he was on the stand. (Trial Tr., p. 206). Detective Bailey took the mask with him when he left Johnson that day. *Id.*

On November 3, 1994, Detective Bailey was with his partner, Detective Stittum. They pulled over Johnson's car, and found Johnson and Campbell inside. They subsequently took both into custody. (Trial Tr., p. 206-07).

On cross examination, Bruns pointed out that the mask taken on August 17th was in police custody on the day of the Boyd murder, and thus could not have been used in the murder. (Trial Tr., p. 207-08).

On redirect, Warren asked Detective Bailey whether he had shown the mask to anyone else while it was in police custody. He had shown it to Detective Nickerson after Detective Nickerson had information that the Boyd shooters were wearing a similar type of mask. (Trial Tr., p. 208).

⁹ This critical identifying feature is not recorded in the police narrative of Elking's statement.

Leslie Williams

Leslie Williams is the mother of Boyd's child. (Trial Tr., p. 219). At the time of the murder, Boyd lived with Leslie Williams and both of their mothers at 3910 Louisiana. *Id.* Leslie Williams, Boyd, and their daughter arrived home on the evening of October 30, 1994 to find Elking sitting on their porch. (Trial Tr., p. 219-20). As she drew water for her daughter's bath, she heard a series of quick pops that she believed to be fireworks. (Trial Tr., p. 220-21).

After hearing the pops, Leslie Williams ran downstairs and saw someone clad in all black firing a gun. (Trial Tr., p. 221-22). She could not see the face of either gunman because the black outfits covered their faces. (Trial Tr., p. 222).

She knew Johnson because he was the father of her cousin's child. (Trial Tr., p. 223). She further testified that Johnson had a lazy eye. *Id.*

On cross examination, Bruns confirmed that Johnson's eyes on that day looked the same as she had always known them, and that Johnson was on a three-way call with her and Pamela Williams on the night of the murder. (Trial Tr., p. 224-25).

Ralph Campbell

Detective Campbell interviewed Johnson on the evening of his arrest, November 3, 1994. (Trial Tr., p. 227). The interview was not about the Boyd murder, but Johnson turned the interview in that direction. (Trial Tr., p. 228-29). Johnson then, unprompted, stated that "there was a witness" and questioned why he let "the white guy live." (Trial Tr., p. 229).

William Mock

In November 1994, Mock was in central holdover at St. Louis City after getting his probation revoked. (Trial Tr., p. 244). He was being held in cell 10 and heard someone who identified themselves as Johnson shouting from another cell. They said that police do not "have the gun" or "the white boy[.]" (Trial Tr., p. 247). They also said that someone needed to "get the gun and take care of the white boy" because he "must be snitchin." *Id.*

After hearing these statements, Mock contacted the homicide unit through the jailers and Detective Jackson brought him up for an interview. (Trial Tr., p. 248). After the interview, he was sent back to his cell. The following day, he overheard the man identified as Johnson speaking again about getting a gun and a prior robbery that had been committed on the south side. (Trial Tr., p. 249). Mock stated on the stand that he was offered nothing for his statements to police by the state. The only thing that he requested was that the prosecutor write a letter to the parole board on his behalf, which Warren provided. (Trial Tr., p. 249-50).

On cross examination, Bruns attacked the veracity of Mock's testimony by first pointing out that the cells at the city holdover were roughly 8 to 10 feet wide, and Mock could not say how far away Johnson and Campbell were while having their conversation. (Trial Tr., p. 251-52). Mock acknowledged that they were at least 20 to 30 feet away. (Trial Tr., p. 253).

Mock was unable to say which cells he was placed in during his time at holdover, or when exactly he was moved into cell 10. (Trial Tr., p. 256). He also could not recall if there were other inmates present in the cells between his and Johnson's. (Trial Tr., p. 257).

Bruns ended his examination of Mock by discussing the witness's history of felony convictions. He had been convicted of First Degree Burglary in 1978, Tampering with a Motor Vehicle in 1988, and Carrying a Concealed Weapon in 1993. (Trial Tr., p. 261-62).

Ronald Jackson

Detective Jackson was the officer who interviewed Mock on November 5, 1994. (Trial Tr., p. 301). Mock had contacted the department and requested to speak with a homicide investigator. Mock told Detective Jackson that he had heard someone speaking about killing a white boy. (Trial Tr., p. 302). Mock was unable to reveal any further details about the supposed killing, and Detective Jackson was not able to match Mock's overheard statements to any crime on record. (Trial Tr., p. 307).

D. The Defense Case

Erika Barrow

Barrow was the only witness called by defense counsel. She was Johnson's girlfriend of two years at the time of trial. (Trial Tr., p. 309). At the time of the murder, she and Johnson were at their friend, Anita Farrow's (hereinafter "Farrow") home near 3900 Lafayette. (Trial Tr., p. 311). Another friend, Robert Williams, was also there. During the time that were at Farrow's apartment, Johnson left, but it was for less than five minutes, and he returned quickly. (Trial Tr., p. 313).

Sometime after Johnson returned to Farrow's, there was a phone conversation, by which they all learned that Boyd had been killed. (Trial Tr., p. 314). She and Johnson went home shortly thereafter and spent the rest of the night at home together. (Trial Tr., p. 315). They were together the entire evening beginning at 7:00 p.m. except for the five minutes that Johnson left Farrow's home. *Id.*

On cross examination, Warren questioned Barrow about the five minutes that Johnson was away from Farrow's home. Johnson said he was going to the liquor store, but it was a Sunday night and he did not come back with anything. (Trial Tr., p. 318). He also said he was going to meet somebody but did not say who. (Trial Tr., p. 319). She could not recall what time he left the home. *Id.*

E. The State's Rebuttal

Joseph Nickerson

Detective Nickerson testified that he had driven from 39th and Lafayette where Farrow lived to Keokuk and Louisiana the location of the crime, and that it would take "no more than five minutes" on a Sunday night. (Trial Tr., p. 334).

On cross examination, Detective Nickerson testified that he'd driven the route anywhere from 20-50 times, and he specifically drove it for this case just two weeks prior to trial.¹⁰ *Id.* He believed the route was only two miles one way. (Trial Tr., p. 335).

F. Closing Arguments

State's Closing

Warren alleged that the shooters were Johnson and Campbell. (Trial Tr., p. 345). He used the two different types of slugs and shell casings recovered from the scene to support the theory that there were two gunmen. *Id.* In reference to Elking's testimony, Warren argued that his identification of Johnson was unwavering due in particular to the lazy eye cited by Elking. (Trial Tr., p. 347). His initial false identification at the police lineup was explained away by Elking's fear of participation in the case. (Trial Tr., p. 348).

The other main piece of evidence used against Johnson during closing was Mock's testimony about the conversation overheard in the holding cell. Mock overheard Johnson allegedly saying to Campbell that they "screwed up and let the white boy live," and they needed to start setting up an alibi. (Trial Tr., p. 350). This testimony was bolstered by Detective Campbell's recounting of a supposed confession from Johnson. *Id.*

Warren challenged Johnson's alibi by questioning Barrow's motive to lie because she was Johnson's girlfriend. (Trial Tr., p. 353). He further questioned her ability to keep her story straight based on her testimony that Johnson may have been gone for up to seven minutes rather than the initial five that she stated. *Id.*

Defense Closing

Bruns focused on the inaccuracy of Elking's identification based on his varying descriptions of the gunmen and his testimony of how the shooters' faces were nearly entirely covered. (Trial Tr., p. 354-55). Bruns also pointed out that Elking was the one who contacted police initially and agreed to cooperate in multiple instances, so it was unreasonable to think that he made an initial false identification simply because he was scared of cooperating. (Trial Tr., p. 356).

Bruns urged the jury to disregard Detective Campbell's testimony. (Trial Tr., p. 358). As to Mock, Bruns stated that there was "absolutely no way" that he was able to overhear the conversations he testified to and piece together who was talking and what they were referring to. (Trial Tr., p. 359). In short, Bruns said Mock was "just plain lying." *Id.*

Defense counsel touched briefly on Johnson's alibi, pointing out that the State's allegation that Barrow was lying because she was Johnson's girlfriend was in no way elicited during cross examination. (Trial Tr., p. 360).

¹⁰ There is no documentation or supplemental report reflecting this investigation in the police report.

G. Verdict and Sentence

The jury retired to deliberate at 3:12 p.m. on July 12, 1995 and returned with their verdict at 4:43 p.m. that same day. (Trial Tr., p. 367). They found Johnson guilty of Murder First Degree and Armed Criminal Action.

On September 29, 1995, the Honorable Booker T. Shaw sentenced Johnson to life imprisonment without the possibility of probation or parole. (Sentencing Tr., p. 12).

VI. Post-Conviction Proceedings

A. Post-Conviction Relief under Rule 29.15 and Motion for a New Trial

On direct appeal, in April 1996, Johnson raised nine claims of ineffective assistance of counsel. (JOHNSONL1788-1802). The Court granted an evidentiary hearing into five of those claims. (JOHNSONL1787). On October 28, 1996, Johnson filed a motion for a new trial based on newly discovered evidence of innocence, including letters from Campbell to Johnson stating that Johnson was not involved in killing Boyd, and prosecutorial misconduct for failure to disclose Mock's complete criminal history. (JOHNSONL1871-1876).

On April 23, 1996, the court denied Johnson's 29.15 motion and motion for a new trial. The court reasoned that Johnson failed to allege or establish facts which, if true, would entitle him to relief under 29.15, and the court was without jurisdiction to grant relief because the motion for new trial was filed out of time. (JOHNSONL001742-1752; JOHNSONL001753-1754).

In a consolidated appeal, on November 10, 1998, Johnson appealed to the Missouri Court of Appeals, Eastern District. (JOHNSONL2598-2652). These claims were denied on April 6, 1999. (JOHNSONL2657-2675).

B. The Federal Habeas Petition

Case No. 4:00CV-00408-HEA

In March 2003, Johnson filed a *pro se* petition for a writ of *habeas corpus* to the U.S District Court for the Eastern District of Missouri. (JOHNSONL003432). On March 24, 2003, the Court denied Johnson's petition for failure to demonstrate a substantial showing of a denial of a constitutional right. (JOHNSONL003444).

C. Missouri Rule 91 Petitions

Case No. 04CV745399

In June 2004, Johnson filed a *pro se* petition for writ of *habeas corpus* to the Circuit Court of Mississippi County. (JOHNSONL004909-4929). Johnson presented new evidence of actual innocence based on letters and affidavits signed by the actual perpetrators and five constitutional claims. Johnson claimed that the State's only eyewitness, Elking, perjured himself when he

identified Johnson as one of the men who killed Boyd. Johnson also claimed that the State failed to disclose, and Johnson's trial counsel failed to investigate and discover, crucial exculpatory and impeachment evidence against Mock. Johnson's petition was denied without prejudice in June 2004. (JOHNSONL004761).

Case No. 04CV746835

In October 2004, Johnson filed a *pro se* petition for writ of *habeas corpus* to the Circuit Court of Mississippi County. (JOHNSONL003351-3391). Johnson again presented evidence of actual innocence based on confessions from the actual perpetrators and the same five constitutional claims summarized above. The Court denied Johnson's petition for writ of *habeas corpus* with prejudice on December 15, 2004. (JOHNSONL003123).

Case No. SC86666

In March 2005, Johnson filed a *pro se* petition for writ of *habeas corpus* to the Supreme Court of Missouri, raising the same claims as his previous two Rule 91 petitions (JOHNSONL004629-4671). The Court denied Johnson's petition for writ of *habeas corpus* in May 2005. (JOHNSONL004377).

VII. Post-Trial Investigation, Joint Investigation & Analysis of Findings

In 2018, counsel for Johnson and the CIU initiated a joint investigation into the facts of the case and Johnson's claims of innocence and of constitutional error.

The summary of investigation below is a compilation of facts uncovered since Johnson's trial and later investigation conducted jointly between the CIU and Johnson's counsel. In line with *Engel v. Dormire*, the CIU "consider[ed] all available evidence uncovered following the trial." 304 S.W.3d 120, 126 (Mo. 2010).

A. Campbell and Howard Credibly Confessed to Killing Boyd

Campbell¹¹ and Howard confessed to shooting Boyd and signed sworn affidavits stating that they killed Boyd and that Johnson was not involved.

After Johnson's trial in July of 1995, but before sentencing on September 29, 1995, Campbell wrote letters to Johnson while both were being held in the City Jail. The letters were seized by jail officials pursuant to a search warrant and were the subject of a motion for new trial. The letters explain what happened on the night Boyd was killed, that Johnson was not involved, and that Campbell and Howard committed the murder.

¹¹ After Johnson's trial, Campbell's counsel uncovered additional, undisclosed criminal history for Mock and Elking stopped cooperating with the Circuit Attorney's Office. The current Circuit Attorney finds is persuasive and clear evidence of materiality and prejudice that after Johnson's trial, Campbell plead guilty in a one-count indictment to voluntary manslaughter for his role in Boyd's homicide. (Campbell Judgment and Sentence).

Lamar,

What's up dude. That's fucked up you got convicted when you didn't do a thing. I toll my lawyer to let me tell the true but he won't. Because he said I can't help no more. I'm sorry I got you in to this but me and didn't try and kill Markus it just happen. That white boy ran when I pulled him from the steps. I didn't see him anymore after we shot Markus. These people ^{told} ~~told~~ him to lie on you, keep your faith in god cause he will make everthing alright. I told you to get a lawyer because the p.d. be working for them. I hope you get a appeal. Stay up X

Phil

Phil

The text of the letter reads:

Lamar,

What's up dude. That's fucked up you got convicted when you didn't do a thing. I toll [sic] my lawyer to let me tell the true [sic] but he won't. Because he said I can't help [illegible]. I'm sorry I got you in to this but me and didn't try and kill Markus it just happen [sic]. That white boy ran when I pulled him from the steps. I didn't see him anymore after we shot Markus. These people told him to lie on you, keep your faith in god cause he will make everything alright. I told you to get a lawyer because the p.d. be working for them. I hope you get a [sic] appeal. Stay up!

Phil

(July 1995 Letter from Campbell to Johnson).

Campbell and Howard have publicly acknowledged their role in the death of Boyd. Neither received any benefit for coming forward, and Howard's acknowledgment of guilt comes with considerable personal risk.

In addition to the letters Campbell wrote in 1995, he signed an affidavit in 1996, just one year after Johnson was convicted. Campbell signed a second affidavit in 2009, again stating that he was responsible for Boyd's death and Johnson was not involved.

Howard signed affidavits in 2002, 2005 and in 2009. Howard and Campbell stated that on October 30, 1994, they were socializing at Howard's house located at 3944 Louisiana Avenue.¹² Howard told Campbell about a disagreement between Howard's friend, Sirone Spates, (AKA "Puffy," hereinafter "Spates") and Boyd regarding a business transaction involving the "crumbs"¹³ from drug sales. (2009 Howard Affidavit, p. 1; 2009 Campbell Declaration, p. 1).

According to Howard, Boyd and Spates agreed that Boyd could keep the crumbs and when the crumbs accumulated Boyd could either give Spates the accumulated crumbs or pay Spates for their value. (2009 Howard Affidavit, p. 1). At the time, Spates was recovering from a gunshot wound to the neck and needed the money. *Id.* Spates had asked Boyd about the crumbs and Boyd continued to "put him off." *Id.* Because Spates was injured, Howard agreed to go to Boyd's house on the night of October 30, 1994 "to teach Marcus a lesson, and also rob him, so that I could get the money Marcus owed my friend Puffy." (2009 Howard Affidavit, p. 2). The two put on dark clothing and masks that "were the "Ninja" style masks, which covered the entire head, and had one large hole in the face for the two eyes." *Id.* (See also 2009 Campbell Declaration, p. 2 ("The masks could be pulled up over the nose, revealing not much more than our eyes.")).

Howard explained that "he had no intention of killing Marcus" but things happened quickly and during the initial struggle, Campbell discharged his gun. *Id.* Both panicked and fired shots into Boyd. (*Id.*; 2009 Campbell Declaration, p. 3). During the incident, Campbell, "[t]ook a few steps up the porch and pointed my gun at the white guy sitting to the left of Boyd and I grabbed the man's shoulder." (2009 Campbell Declaration, p. 3).

After fleeing the scene, Campbell and Howard "ran down the gangway between houses and then jumped fences through back yards all the way back to my mom's back door." (2009 Howard Affidavit, p. 3; see also 2009 Campbell Declaration, p. 3 ("After the shooting, James and I ran back down the gangway to the alley and back to James' house.")).

Each of the affidavits unequivocally state that Howard and Campbell killed Boyd and provide details about the motive, and other information that is corroborated as summarized above. "Lamar Johnson was not involved in the death of Marcus Boyd. I know Lamar Johnson is innocent of that crime because I was there and Lamar Johnson was not there." (2009 Howard Affidavit, p. 3). After review and additional investigation, the CIU finds these affidavits reliable and credible evidence of Johnson's innocence.

On September 27, 2018, the CIU interviewed Howard at length regarding his role in the homicide of Boyd. The CIU found him credible and his version of events is corroborated by Elking, Leslie Williams, Campbell and the physical evidence, including the type of masks and clothing worn, the firearms used, how the shooters arrived on the porch at 3910 Louisiana, and how they left the scene.

¹² 3944 Louisiana is less than 400 feet from Boyd's apartment at 3910 Louisiana.

¹³ "Crumbs" result from the cutting of larger crack cocaine cakes. Crumbs are saved and eventually grow into a considerable amount of crack with significant street value.

B. The State's key witness, Elking, was paid to identify Johnson

As early as 2003, the State's key witness, Elking, recanted his identification and trial testimony in a letter to Reverend Rice of St. Louis. The letter was found¹⁴ years later by Johnson's counsel after Elking told them he had been trying to tell the truth about his false testimony against Johnson. In part, the 2003 letter to Reverend Rice states:

When they [police] talked to me they showed me some photos of suspects, but could not identify no one, because I did not know them or seen [sic] their faces. Then when they [police] showed me a line-up in City Jail, I still could not pick out the suspects. Then the detectives and me had a meeting with the Prosecutor Dwight Warren and convinced me, that they could help me financially and move me & my family out of our apartment & and relocate use [sic] in the County out of harms [sic] way. They also convinced me who they said they knew who murdered Marcus Boyd.¹⁵

They [police] had me say the suspects numbers in the lineup, and told me to say the reason I didn't pick them out while the lineup was going on, was because I was scared & terrified. The reason I'm telling you this now is my consiance [sic]. I regret not coming to you or anyone else sooner. I don't believe it was [the] right thing to do then & more so now.

(July 2003 Letter from Elking to Rev. Rice, p. 1-2).

In 2009, Elking and his ex-wife both signed sworn affidavits indicating they received several monetary payments from the State. Johnson's attorneys repeatedly requested documentation of payments to Elking from various entities, including the Circuit Attorney's Office, but the records evidencing payments to Elking were never disclosed. In fact, the documents were not only withheld, their existence was denied. A summary of Johnson's requests for documentation relating to Mr. Elking is below:

¹⁴ Elking told counsel for Johnson that he had written to Reverend Rice years earlier. Remarkably, Reverend Rice's staff kept the letter and provided Johnson a copy, along with a records custodian affidavit.

¹⁵ This 2003 account by Elking is corroborated by the record. On December 6, 1996, at Johnson's 29.15 PCR hearing Detective Nickerson testified:

"[T]he witness [Elking] had known Mr. Johnson prior to this incident...I felt at the time Mr. Elking knew who we were looking for. We knew who was responsible. Anything even by name anything more was -- at that time it wasn't necessary. It might have been done. It might not have been done, but *he knew who we wanted. There was no question in my mind who was responsible.*"

(1996-12-06 PCR Hearing Tr., p. 23-24) (emphasis added).

Date of Request	Documents Requested	Agency	Response
2009-03-25	"[A]ny and all records pertaining to the incidents including all original investigative and supplement reports" relating to the homicide of Marcus Boyd.	St. Louis Police Department	Investigative reports received, no records related to payments to Elking were included in the response to Johnson's request.
2010-02-05	"[A]ll records that relate to any monies paid out from the Crime Victim's Compensation Fund to recipient James Greg Elking (DOB: 09/27/64) or Kelly Elking (DOB: 12/27/68) including, but not limited to, any other reward recipients and applicants and victim payouts in connection with the prosecution and conviction of Lamar Johnson, Case No. 941-3706A, in the 22nd Judicial District by prosecutor Dwight Warren. The lead St. Louis Police Department detective was Joseph Nickerson."	Dept. of Public Safety, Crime Victims Compensation Fund	2010-06-03 "In, response to your request for all financial records and checks written to Mr. Elking, please be advised that our office does not have a record of a compensation claim nor any checks written to him."
2010-02-02	"Any and all records related to trial witness James Greg Elking, DOB 09/27/64; SSN 488-74-6622, including any prior conviction, plea agreements, and financial compensation paid by any state agency to Mr. Elking from this case."	Missouri Attorney General	2010-03-03 "After reviewing the records of this office, we have found nothing which is responsive to your Request."
2010-02-17	"[A]ll records that relate to any compensation given to recipient James Greg Elking (DOB: 9/27/64) or Kelly Elking (DOB 12/27/68) including, but not limited to, any other reward recipients and applicants and victim payouts in connection with the prosecution and conviction of Lamar Johnson, Case No. 941-3706A, in the 22nd Judicial District, by prosecutor Dwight Warren. The lead St. Louis Police Department detective was Joseph Nickerson."	St. Louis Circuit Attorney	No response noted.

Date of Request	Documents Requested	Agency	Response
2010-06-18	"[A]ll financial records and checks written to James Elking (DOB 09-27-1964). Mr. Elking has stated that he received funds through the Circuit Attorney in 1994-1995."	St. Louis Circuit Clerk	<p>2010-06-20 "Based on our conversation today, it is my understanding that you think Mr. Elking received an amount of money that ordinarily exceeds a witness fee. We will check Mr. Lamar Johnson's case, cause number 22941 -03706A-01, and provide you any financial information regarding that file."</p> <p>No further response noted or records disclosed.</p>
2010-09-17	"[A]ll financial records and checks that were written stemming from the death of Marcus Boyd (DOB: 1 1-14- 1968)."	Department of Public Safety, Crime Victims Compensation Fund	<p>2010-09-24 "In response to your request for all financial records and checks written on behalf of and stemming from the death of Marcus Boyd, please be advised that our office is unable to reproduce a copy of his file. Since his claim was archived in 1996, the file no longer exists as files are destroyed after ten (10) years. However, we were able to print computer screens from his claim showing a few of the details such as the payments that issued."</p> <p>NOTE: Thirteen pages of payments made from the Crime Victim's Compensation Fund were provided but none related to Elking. All documented payment for Boyd's funeral and burial services.</p>
2010-03-12	"[A]ny and all records that relate to expenses reported by prosecutor Dwight Warren in connection with the prosecution and conviction of Lamar Johnson, Case No. 941 70GA, in the 22nd Judicial District, between October 30, 1994 and September 30, 1995."	St. Louis Circuit Attorney	<p>2012-04-11 Response "After reviewing our files and records, we are unable to locate any records that relate to expenses reported by prosecutor Dwight Warren in connection with the prosecution and conviction of Lamar Johnson, Case No. 22941-3706A, between October 30, 1994 and September 30, 1995."</p> <p>2012-04-26 Supplemental Response "After reviewing our files and records, we are unable to locate any records that relate to expenses reported by prosecutor Dwight Warren, another prosecutor or any employee of the Circuit Attorney's Office in connection with the prosecution and conviction of Lamar Johnson, Case No. 22941-3706A, between October 30, 1994 and September 30, 1995."</p>

Date of Request	Documents Requested	Agency	Response
2010-03-12	“[A]ny and all records that account for expenses paid out of the Circuit Attorney's crime victim's fund between October 30, 1994 and September 30, 1995.”	St. Louis Circuit Attorney, Victim Services Unit	2012-04-16 “After reviewing our files and records, we are unable to locate any records that account for expenses paid out of the Circuit Attorney's crime victim's fund (or any of the Circuit Attorney's Office fund) between October 30, 1994 and September 30, 1995.”
2014-09-16	“[R]equest access to the physical law enforcement investigation and legal file for viewing, inspecting and copying	St. Louis Circuit Attorney	2014-11-18 400 pages of records, including the legal file, were turned over to Johnson. No records relating to payments to or on behalf of Elking were included in Johnson’s record request.
2014-09-30	Records of payments [including but not limited to monetary and in-kind payments] to victims, witnesses any other party connected with this investigation and prosecution	St. Louis Police Department	Investigative reports received, no records related to payments to Elking were included in the response to Johnson’s record request.

As part of the joint investigation, in February of 2019, the CIU searched the Circuit Attorney’s file and located 63 pages of documents related to payments to Elking and services procured by the State on his behalf totaling at least \$4,241.08. A ledger was discovered during the CIU’s review of the States review of Johnson’s file:

Transaction	From Ledger:		
	Payee	Amnt	For
1	11/04/94 - Greg Elking	\$250	Moving Expenses
2	11/09/94 - Laclede Gas	\$227.99	Utilities
3	11/09/94 - Southwestern Bell	\$132.30	Utilities
4	11/09/94 - Union Electric	\$848.01	Utilities
5	11/09/94 - Greg Elking	\$242.63	Moving Expenses
6	11/22/94 - McBurre Moving	\$392.50	Moving Expense
7	11/22/94 - Public Storage Mgmt	\$105.00	Misc.
8	12/1/94 - Greg Elking	\$222.43	Misc.
9	12/1/94 - Greg Elking	\$194.99	Misc.
10	1/24/95 - Greg Elking	\$55.36	Misc. (Storage Facility)
11	2/2/95 - Public Storage Mgmt	\$67.00	Misc. (Storage) (Furniture) (94-136016) AB
12	3/10/95 - Public Storage Mgmt	\$77.00	Misc. (Storage) (Furniture) (94-136016) AB
13	3/16/95 - Bill Baker	\$1425.00	Moving Exp. (Rent, Deposit) (Initial home)
		\$4241.08	
	Asset Forf. Victim Witness Protection Fund		

The documents discovered by the CIU include copies of cancelled checks, correspondence with movers and successful efforts to locate and pay for Elking's housing costs. Additionally, the balance of back utility and telephone bills was paid for Elking by the State, as well as evidence of cash payments to Elking. The payments began on November 4, 1994—the day Elking was presented to the Circuit Attorney's Office by Detective Nickerson—and continued for months thereafter, including undocumented cash payments before Elking testified.

The documentation in the State's file describes Elking as an "essential witness" and the CIU agrees. Without Elking, there was no case against Johnson. These documents are *Brady* material, and there is no legitimate reason the documents should not have been disclosed before trial pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). ("The suppression by the prosecution of evidence favorable to the accused...violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."); see also *Merriweather v. State*, 294 S.W.3d 52, 54 (Mo. 2000)).

In April of 2019, Elking testified that he had several outstanding traffic violations that were resolved by the State. The CIU has no reason to dispute this account. Again, the details of this assistance should have been disclosed to the defense before Johnson's trial.

In July of 2019, the review of Johnson's file continued. Additional documentation regarding the favors to Elking was discovered, including independent corroboration that the State did in fact "take care of" a number of tickets for Elking.

TICKETS 621 38

Greg ELKING

94 0361582 - 7 } Insurance
 94 0361581 - 9 } License -
 94 0361580 - 8 } Speeding

3/3 { NOLLE George
 { PROSSE 2/13

(STLCADISCL0098).

It should be noted that Johnson's counsel previously requested permission to view and copy the State's file in 2014, and was granted limited access. The physical file that counsel was permitted to inspect did *not* include the notes, proof of Mock's criminal history, or other exculpatory and impeachment information that has recently been unearthed by the current Circuit Attorney.

C. The Identification by Elking was Unreliable at the Time of Trial

Even with the information known by the State at trial, the identification by Elking was unreliable.¹⁶ It was an error in judgment for ACA Dwight Warren to put the identification before the jury. Elking stated on numerous occasions that he did not know Johnson and had never met him; he stated this: to police during the investigation, during his June 21, 1995 deposition, and again at trial. (2003 Letter from Elking to Johnson, p. 3; 2003 Elking Affidavit, p. 2; 1995 Elking Deposition, p. 4-5;

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Reliability, rather than suggestiveness, "is the linchpin in determining the admissibility of identification testimony." *Manson v. Brathwaite*, 432 U.S. 98, 114 (1977); *State v. Charles*, 612 S.W.2d 778, 780 (Mo. banc), cert. denied, 454 U.S. 972 (1981); *State v. Higgins*, 592 S.W.2d 151, 160 (Mo. banc 1979), appeal dismissed, 446 U.S. 902 (1980). In determining whether an identification is reliable, the court must consider the "totality of the circumstances," including "the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between [**8] the crime and the confrontation." *Brathwaite*, 432 U.S. at 113, 114. See *Neil v. Biggers*, 409 U.S. 188, 199-200, 34 L. Ed. 2d 401, 93 S. Ct. 375 (1972); *Charles*, 612 S.W.2d at 780; *Higgins*, 592 S.W.2d at 160. Finally, "against these factors is to be weighed the corrupting effect of the suggestive identification itself." *Brathwaite*, 432 U.S. at 114." *State v. Story*, 646 S.W.2d 68, 71 (Mo. 1983).

Trial Tr., p. 191). The crime was committed at night by two black men wearing masks that covered their heads, including their ears, necks, eyebrows, foreheads, cheeks, mouths, chins, and most of their noses. (2019 Elking Deposition, p. 50-52; Trial Tr., p. 190).

According to the evidence introduced at trial, as well as statements from Elking, Campbell, and Howard, the masks worn by Campbell and Howard looked like this:



The masked men wore dark clothing that covered all but their hands and each carried a firearm. Elking testified at his 1995 deposition and trial that the porch light was not on and that “it was dark.” (1995 Elking Deposition, p. 9-10; Trial Tr., p. 189-90) Elking was “in shock” and feared being shot during the shooting. (1995 Elking Deposition, p. 22, 26; Trial Tr., p. 165-66)

The circumstances of the crime make a reliable and accurate identification of a person unknown to the witness implausible and offends even the most basic notion of fairness.

Further evidencing his inability to make an identification, Elking refused to sign any of the photographs at the first meeting with Detective Nickerson. That array that was unduly and unconstitutionally suggestive because it included two suspects¹⁷ in the five-photo array.

¹⁷ The police focused on Johnson as the primary assailant *before* the only eyewitness, Elking, was even located and interviewed by police. The CIU has found no legitimate reason for this focus and bias. How and why Johnson was included in an array before any legitimate investigation into Boyd’s homicide began are troublesome questions that remain unanswered. At a minimum, it reflects poor judgment and a failure by law enforcement to fulfill their duty to conduct thorough, unbiased investigations.

The following report, dated October 30, 1994 (the night of the homicide) lists Johnson as the only suspect. At that point in the investigation, not a single witness had been substantively interviewed and the only eyewitness, Elking, had not been located:

Scene Investigation:

FOUR 25 CAL. SHELL CASINGS WERE RECOVERED FROM THE FRONT PORCH AND ONE FROM THE FRONT LAWN AT 3910 LOUISIANA. ONE SPENT PROJECTILE WAS ALSO RECOVERED FROM THE FRONT PORCH. DURING THE COURSE OF THIS INVESTIGATION THE NAME OF LAMAR JOHNSON B/M 20 DOB 12/6/73 LID #232319 SURFACE AS A SUSPECT.

Followup: POST, LAB RESULTS, INTERVIEW ASSOCIATES AND FURTHER INVESTIGATION ON LAMAR JOHNSON. LOCATE AND INTERVIEW GREG HE ONCE WORKED WITH THE VICTIM AT SAYERS PRINTING CO. PH# 968-5400 EXT. 328. GREG LIVES ON BAMBURGER A FEW DOORS EAST OF CHIPPEWA.

(Police Report, p. 1)

Later on November 3, 1994, Elking viewed the lineup containing Johnson at least three times before finally identifying a filler from the City Jail holdover. These significant red flags should have further signaled to the ACA Dwight Warren that the later identification (allegedly occurring in an elevator with Detective Nickerson and no other witnesses present) was unreliable and likely the product of impermissible suggestion, promises, inducements, threats, or coercion.

In the past 20 years, much has been learned about the fallibility of eyewitness identifications, including the unique challenges of interracial identifications, weapon focus, and the role trauma and stress play in reducing the accuracy of eyewitness identifications since. But, this is not a case of eyewitness *misidentification*. Rather, Elking was *never able* to make an identification—a fact he stated early and often once he was contacted by police. ACA Dwight Warren should have taken Elking at his word, especially considering the circumstances of the crime.

Unfortunately, Elking succumbed to the impermissible pressure and the undisclosed promise of funds to “help him get back on his feet” and ultimately testified against Johnson despite having no opportunity to see or identify the shooters. In a case which hinges almost entirely on the account of a single witness, this error is so material and prejudicial¹⁸ that the Circuit Attorney’s Office cannot ignore it.

D. The Crime Scene Reconstruction

On October 20, 2016, counsel for Johnson conducted a crime scene reconstruction with the assistance of a retired detective. Young black males of similar body type, age, and complexion were enlisted to play the roles of Campbell, Howard, and Boyd. The actors wore dark clothing and black ski masks and carried replica firearms. Measurements from the scene diagram found in the police report were used to guide the reconstruction. Still photographs and video were taken from Elking’s stated location, both with the porch light on and off, even though Elking and the police report indicated the porch light was off. A streetlamp was illuminated during the reconstruction as it was on the night Boyd was killed.

The reconstruction photographs and video are compelling demonstrative evidence of the darkness at the scene and Elking’s inability—or the inability of any witness—to see significant portions of the assailants’ facial features. The reconstruction confirms what should have been known to law enforcement and ACA Dwight Warren (and what was represented by Elking) at the time: Elking had no ability to see or make an identification.

E. The State Failed to Disclose Mock’s Extensive Criminal History and His Experience as an Incentivized Informant

Mock, a man with extensive criminal and history of cooperating as a jailhouse informant, was incarcerated in the City Jail holdover at the same time Johnson and Campbell were housed there. (Police Report, p. 25, 51; Trial Tr., p. 244-45).

¹⁸ Prejudice within the cause and prejudice analysis exists when “suppressed evidence is ‘material’ for Brady purposes.” *Banks v. Dretke*, 540 U.S. 668 (2004).

On November 5, 1994, just two days after Elking made the identification and gave his manufactured statement, Mock notified law enforcement that he had information to share. Mock claimed that he overheard an incriminating conversation involving three inmates regarding a murder. He shared the details with Detective Jackson, but this conversation was not recorded. The next day, Mock claimed to have overheard another conversation regarding the Boyd homicide. The substance of his statement and testimony are summarized above at page 11-12.

Mock recounted the alleged confession to the jury. (Trial Tr., p. 245-49). However, the jury was not informed of the majority of Mock's criminal history or his history of exchanging testimony for a more lenient sentence.

Mock had a 200-page-long criminal history spanning several states and a history as a jailhouse informant. Mock was consistently in and out of custody and testified that he had been convicted of three felonies at the time of Johnson's trial. (Trial Tr., p. 244)

Shortly after Johnson's trial, counsel for Campbell gave additional details of Mock's criminal history to Johnson's counsel. Subsequent investigation uncovered a lengthy criminal history, including both felony and misdemeanor convictions involving crimes of dishonesty, among them theft, burglary, and fraud. This criminal history should have been disclosed by the State before trial as it falls squarely into the rule of *Brady*¹⁹ as impeachment evidence.

Given the prior cooperation between Mock and law enforcement, ACA Dwight Warren knew or should have known of Mock's full criminal history and status as an incentivized jailhouse informant. The claim by a jailhouse informant that he could hear these conversations in a crowded holdover unit that housed many individuals is in itself highly questionable.

Further, Mock was an incentivized witness in 1992 under bizarrely similar circumstances. He was an inmate in the Jackson County jail when claimed to overhear another inmate admit to a homicide. Mock sought a reduction in sentence as a result of his cooperation in the Joseph Smith prosecution. Below is the police narrative summary of Mock's initial statement regarding the jailhouse confession he claimed to overhear in 1992:

¹⁹ The Supreme Court's opinions decades after *Berger* aligned the criminal defendant's due process rights with the prosecutor's obligations to ensure justice. "[S]uppression by the prosecution of [material] evidence favorable to an accused" is a due process violation, regardless of the good or bad faith of the prosecutor's withholding of such evidence. *Brady v. Maryland*, 373 U.S. at 87. The duty to disclose encompasses evidence which is either directly exculpatory or would impeach a state witness. *United States v. Bagley*, 473 U.S. 667, 676 (1985); *Giglio v. United States*, 405 U.S. 150, 154 (1972).

On 5/21/92, at approximately 0830 hours, reporting detective was contacted by "Phil" Mock at 1125 Locust, second floor, where he had voluntarily responded to relate information he had relative to the above investigation.

Mock stated he was recently a cell mate of suspect Joseph Smith, W/M, 5/2/65, in the Jackson County Jail, and Smith told Mock that he was driving the car which had struck the above two victims but the police would not be able to prove it. Smith reportedly told Mock that after the incident the next thing he remembered was waking up upside down in his car.

Mock, who was in jail on a burglary charge, stated he was willing to testify about what Smith told him.

(Police Report, *State v. Joseph Smith*, Case No. CR92-1927.)

Such information was critical to Mock's credibility as a disinterested, reliable witness, yet the State failed to disclose any of this information to the defense. Had Mock's full criminal history and his history as an informant been disclosed, as well as his stated motive to assist in Johnson's case, his testimony could have been discredited entirely.

The State further argued that incentivized jailhouse informant Mock had no motive to lie.

MR. WARREN: What motive does Mock have? What is he gonna get out of this a letter to his parole board? For that - and remember, he didn't have anything in the beginning. He came and said to the police I just got to go back there on this CCW. I'm not asking for anything. I'm tellin' you what happened because of some terrible event that's happened in his life. The man may be a burglar, he may be somebody that carries a gun, I think he had another charge there too but he's the man that draws the line. This was a terrible waste of life. It was a cold-blooded murder and you draw the line. Even criminals, people in jail have got some morals and those morals say, you know, enough is enough on this murder stuff. There's just too much murder. I can't keep my mouth shut and turn my face because of what has happened. Mock stood up and was counting, counting as an honest, God-fearing man to tell you the truth.

(Trial Tr. p. 352-53).

This is false testimony. The prosecutor knew that Mock asked for substantial assistance, and that Mock was testifying with the expectation of benefit. In a letter to Warren, Mock summed it up as follows:

William Philip Mock 507612
 WESTERN MISSOURI CORRECTIONAL C
 609 E PENCE RD
 CAMERON MO. 64429
 6-1-95

Dear Mr Wright,

Per our conversation today with yourself and John I felt the need to put my intentions in writing.

I will testify articulately, accurately and honestly to the information I acquired while at the city hold over, bringing about a successful resolution to this trial.

I don't believe that anyone in the legal system will disagree with the value of my testimony in this trial as apposed to this conviction I am now serving.

I am willing to testify as long as I don't have to return to the Department of Corrections once I testify. I don't want to live in protective custody or any institution once I testify.

I am serving a five year sentence for CCW. which I have been serving since early 93. I feel my testimony is worth a pardon by Mr. Carnahan or a reduction in my sentence by Judge Mason Division II of the Jackson County Court, Kansas City, Missouri.

" I propose this: that Judge Mason reduce my five year sentence to time served with a blood for my testimony or that Governor Carnahan pardon me with time served thus guaranteeing my safety away from the Department of Corrections.

Thus if I return to the M.D.C. it will be of my own doing which will not happen either.

I am positive that this can be worked out for the good of all. I will uphold my end of this situation as I am positive you will fulfill your obligations to me.

Sincerely
 W. Philip Mock

That assistance went well beyond a letter to the parole board, which is what Mock testified that he expected at trial. Warren wrote a number of letters on Mock's behalf—both to the Board of Probation and Parole and to the Department of Corrections regarding custody placements and disciplinary incidents where Warren and others in the Circuit Attorney's Office intervened on Mock's behalf, as well as provided him with tangible benefits in the jail like cigarettes and coffee. In one of the letters to Warren, Mock refers to Johnson and Campbell as “two-bit niggers” that he is pleased to help Warren convict. Evidence of witness bias, including racial prejudice and animus, is *Brady* material and should have been disclosed.

Correspondence between Mock and the Circuit Attorney's Office continued for months after Johnson's trial in July of 1995, and none of the correspondence was disclosed to the defense, despite Johnson raising constitutional claims regarding the failure of the State to disclose the full extent of its deal with Mock in a motion for new trial and in direct appeal. (JOHNSONL001788-1802; 1871-1873). Instead, the prosecutor argued to the jury that Mock had no reason to lie when the prosecutor knew that statement was false.

In 1995, the Supreme Court further extended a prosecutor's duties to cover agencies acting on the state's behalf. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). Thus, when an investigating agency such as a police department has knowledge of exculpatory evidence, a “duty to learn” of such evidence is imposed on the prosecuting attorney. *Id.* This evidence must then be disclosed to defense counsel as required under *Brady*. *Id.*

Prosecutors further have a duty to ensure that they are not knowingly presenting false evidence to the jury. *Napue v. Illinois*, 360 U.S. 264, 269 (1959). It matters not that the false evidence merely goes to the credibility of a witness rather than the substance of the crime(s) charged. *Id.* While the law recognizes that false evidence may be unintentionally elicited from witnesses, in such a scenario, *Napue* imputes upon the prosecutor a duty to correct such testimony. *Id.*

Mock's testimony about his expectation of benefit was false and Warren knew it, imposing on the prosecutor a duty to correct the false testimony. As *Napue* itself states, “[a] lie is a lie, no matter what its subject,” and the prosecuting attorney must not let the jury believe it to be true if he can correct it. 360 U.S. at 269-70 (quoting *People v. Savvides*, 136 N.E.2d 853, 854 (N.Y. 1956)).

On their own, the nondisclosures relating to Elking and Mock each deprived Johnson of the fair opportunity to cross-examine and attack the credibility of the witnesses against him. Together, the nondisclosures deprived the defense of its ability to defend and refute the State's weak case.

F. The Police Report and Subsequent Witness Statements Suggest A Fabricated Motive

The police report attempted to establish a motive for Johnson to kill Boyd, but subsequent investigation indicates that motive was likely fabricated.

Leslie Williams

Leslie Williams was interviewed on the evening of the homicide and the following morning. The police report indicates that Leslie Williams:

[A]dvised that she strongly believes that Lamar may have had something to do with the murder because yesterday, 10-29-94, she was contacted by a white female whom she knows only as Dawn. Dawn telephoned her late in the evening and advised her that she was going to have a visitor and the visitor would be Lamar. Dawn was talking with another white female subject whom she knows as Christine in the background during this conversation and she told the subjects it was late and Marcus was asleep and she hung up. Lamar did not come.

(Police Report, p. 67).

The report further indicates that Leslie Williams stated she could not think of anyone that Boyd had problems with other than Johnson. *Id.*

Leslie Williams was shown the police report and denies that she ever told police that she received a phone call from Byrd the night before Boyd was killed and had no recall of any conversation with Byrd in which Byrd told her that Johnson would be coming to visit. Further, Leslie Williams stated that she never told police that Johnson had been watching her and Boyd's apartment and that it was not true.

The police report states that Leslie Williams further told Detective Nickerson that Johnson told Boyd that he had recently been stopped by police and "police searched his vehicle and found some of their (Marcus and Lamar's) money." (Police Report, p. 36). The police kept the money and told Lamar that they were seizing it. "Marcus did not really believe that Lamar was stopped by police and that the money was seized." *Id.*

Leslie Williams also disputed this portion of the police report, noting that she knew nothing about the incident described in the report so she could not have given that information to Detective Nickerson.

Finally, in Leslie Williams' 1995 deposition, she stated that Boyd and Johnson were once very close and it bothered Boyd that they had drifted apart, but she could think of no reason that Johnson would want to kill Boyd. (1995 Leslie Williams Deposition, p. 5-6, 12). Leslie Williams further testified that Boyd and Johnson had spoken about a week prior to the homicide when Johnson stopped by the apartment at 3910 Louisiana, and there was no animosity between them nor words exchanged, and there had never been threats between them to her knowledge. (1995 Leslie Williams Deposition, p. 6, 10-11).

Ed Neiger

Neiger was contacted by Detective Nickerson on October 31, 1994, as a result of monitoring Boyd's pager found at the scene. The police report indicates that Neiger told Detective Nickerson that Boyd and Johnson had "gone their separate ways" in their drug partnership because Johnson was selling "a lot of burn bags" and Boyd did not want anything to do with those problems. (Police Report, p. 33). The police report further indicates that Neiger told Detective Nickerson that the only person who would want to hurt Boyd was Johnson because Johnson was "not happy about the split" from Boyd. *Id.* Neiger, a customer of both Boyd and Johnson, stated that Johnson had recently been "cheating on the product" and selling bad cocaine. *Id.*

Neiger, after reviewing the police narrative attributed to him, signed a notarized affidavit swearing that he never told Detective Nickerson of any split between Johnson and Boyd because he had no knowledge of their relationship. (2012 Neiger Affidavit, p. 1-2). Neiger further swore that he never told police that Johnson was selling burn bags, nor did he tell police that he believed Johnson was the only person who would want to hurt Boyd. *Id.* Because he had no knowledge of Boyd and Johnson's relationship, Neiger stated that he would have no way of knowing whether there was animosity between them. *Id.* Neiger stated that the portion of the report that indicates that he and Byrd spoke, and Byrd told Neiger she was unhappy with Johnson is truthful. (2012 Neiger Affidavit, p. 2).

Dawn Byrd and Kristine Herrman

Byrd and Herrman were contacted by Detective Nickerson and interviewed together on November 1, 1994.

The police report indicates that Byrd told Detective Nickerson that on October 29, 1994, the day before Boyd was killed, that Johnson told Byrd and Herrman that he was going to Boyd's house to discuss the bad drugs Byrd believed her friend had received from Johnson. (Police Report, p. 37). The police report claims that Byrd further stated that:

She called Markus in an attempt to alert him that Lamar was on the way. The phone was answered by Markus's girlfriend Leslie [Williams]. Byrd asked to speak with Markus, but was informed by Leslie [Williams] that Markus was asleep. She went onto tell Leslie [Williams] that Lamar might be on the way and that he (Lamar) wanted to speak with Markus about some problems.

Id.

Byrd, in a sworn affidavit, disputed the police report narrative above stating:

That entire paragraph is untrue. Lamar never said he was going to visit Markus during the visit. Since I knew both Lamar and Markus, if Lamar had given me any indication that he was going to confront Markus about anything, I would have gotten involved. I am absolutely certain that Lamar never said he was going to visit Markus that night...I am positive I didn't call to warn [Boyd and Leslie Williams]

that Lamar was coming over, because Lamar never said he was going to visit Markus. That is simply not true.

(2012 Byrd Affidavit, p. 3).

The police report further states that on the day Boyd was killed, October 30, 1994, Byrd spoke with Boyd about Johnson. According to the police narrative, Boyd told Byrd that “he had been seeing Lamar’s car around his house a lot the last couple of days and wandered what Lamar was up to. Byrd went on to state that she gave Markus a ride home from the National Store (the night he was killed). The time might have been around 8:40 p.m. When they were driving east on Keokuk, Markus suddenly stated to her, ‘Is that Lamar’s car up there?’ pointing in an easterly direction.” (Police Report, p. 38).

However, Byrd stated in her sworn affidavit: “[I]t is untrue that Markus mentioned seeing Lamar’s car near his house. If Markus had said that to me, I would have immediately called Lamar and confronted him. I did offer Markus a ride home that night and drove him to his apartment. During that short ride home, I am positive Markus did not point to a car, any car, and speculate that he had seen Lamar’s car.” (2012 Byrd Affidavit, p. 4-5).

The police report also indicates “Herrman stated that she could add nothing to what Byrd had stated, but did in fact go by Markus’s apartment on Sunday and did speak to Leslie [Williams], Markus was not home. She informed Leslie [Williams] that Lamar, before leaving Byrd’s house late last night (Saturday) told the two of them [Byrd and Herrman] that he was going to see Markus. Lamar seemed rather upset that he was losing some of his business to Markus.” (Police Report, p. 38).

In a sworn affidavit, Herrman disputed the entire narrative attributed to her, stating: “I am positive I did not go by Leslie’s [Williams] apartment that Sunday, the day Markus was later killed. I am positive I did not talk to, or visit with Leslie [Williams] that day. And I am positive that I did not meet Lamar Johnson the night before. I would not have said those things to Leslie [Williams], because I had never met Lamar.” (Herrman Declaration, p. 4).

The CIU finds it credible and persuasive that all four witnesses that Detective Nickerson reported knowing of a severed drug business and animosity between Boyd and Johnson dispute the statements attributed to them in the police report.

G. Johnson’s Alibi Witnesses & Detective Nickerson’s False Testimony Regarding the Distance from Johnson’s Alibi Location to the Crime Scene

Detective Nickerson was not called by the State during its case-in-chief even though he was the lead detective and interviewed the majority of the witnesses, including Elking. Detective Nickerson did testify in the State’s rebuttal case regarding Johnson’s alibi. (Trial Tr., p. 333-36).

On the night Boyd was killed, Johnson was with his girlfriend Barrow and their small child at Farrow and Robert Williams’ home at 3907 Lafayette. (1995 Leslie Williams Deposition, p. 14; Trial Tr., p. 311-12; 1996-12-06 PCR Hearing Tr. p. 30; 2009 Barrow Affidavit, p. 1; Robert Williams Declaration). Johnson left Farrow’s sometime around 9:00 p.m. to make a drug sale after

receiving a page. (Trial Tr., p. 313; 1996-12-06 PCR Hearing Tr., p. 31; 2009 Barrow Affidavit, p. 1; CIU interview with Johnson). When the buyer arrived, Johnson got into his car and the two drove around the block to make the exchange. (1996-12-06 PCR Hearing Tr., p. 31). Johnson was then dropped back off at Farrow's apartment—the entire exchange taking only a few minutes. (Trial Tr., p. 313; 1996-12-06 PCR Hearing Tr., p. 31; 2009 Barrow Affidavit, p. 1; Robert Williams Declaration).

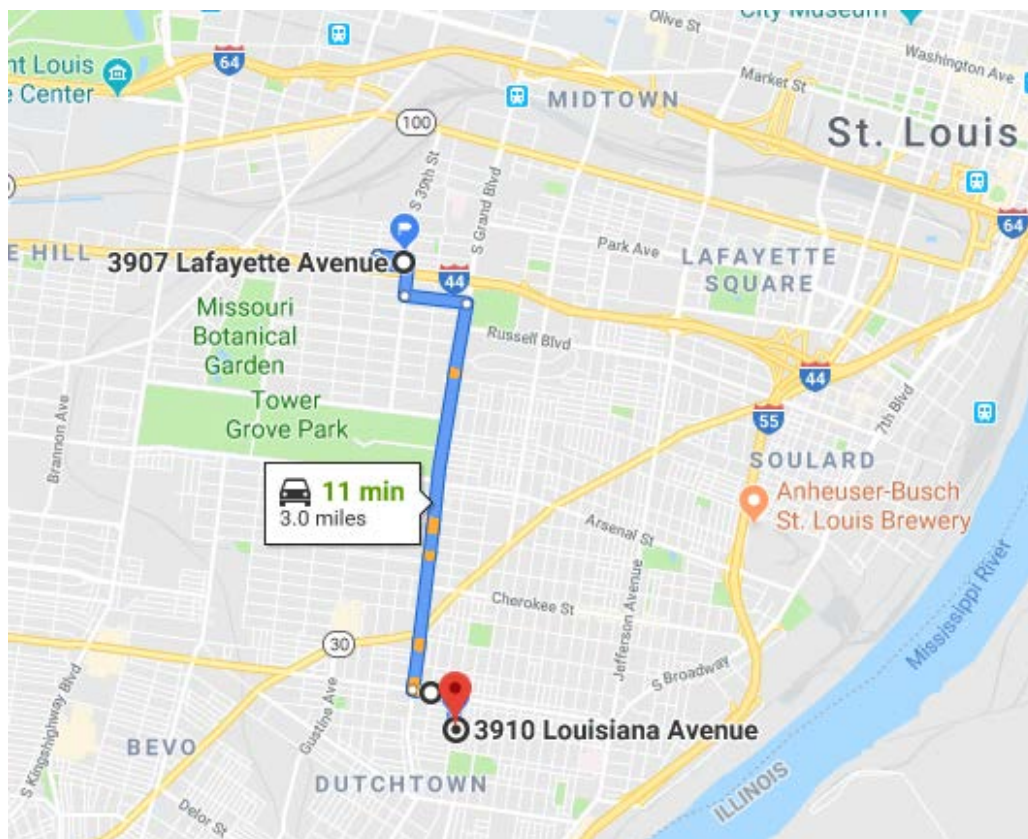
In response to Barrow's testimony that Johnson was with her at the time of the homicide, Detective Nickerson testified in rebuttal that he had driven from 39th and Lafayette [alibi location] to Keokuk and Louisiana [homicide scene] before, and that it would take "no more than five minutes" on a Sunday night. (Trial Tr., p. 334).

On cross examination, Detective Nickerson testified that he'd driven the route anywhere from 20-50 times, and he specifically drove it for this case just two weeks prior to trial.²⁰ *Id.* He believed the route was only two miles one way. (Trial Tr., p. 335).

This was highly misleading testimony and it is the position of the CIU that it was false. No attempt was made by ACA Dwight Warren to verify Detective Nickerson's testimony regarding the time and distance. Detective Nickerson's account contradicted facts that were known and undisputed including:

- all witnesses testified that the assailants arrived and left on foot;
- no vehicle was seen leaving the scene;
- no explanation was given for how Johnson would have rendezvoused with Campbell when he was on Lafayette Avenue without Campbell;
- Johnson was at Farrow's apartment on Lafayette Avenue when he received a page from Pamela Williams that Boyd had been killed shortly after the shooting; and,
- the drive could not have taken five minutes or less.

²⁰ This investigation, if it occurred, was not documented in the police report.



Johnson had three alibi witnesses that were with him at the time Boyd was killed: Barrow, Robert Williams, and Farrow and two that were on the telephone with him shortly after the homicide: Leslie Williams and Pamela Williams. Defense counsel called only one of those witnesses, Barrow—Johnson’s girlfriend. Johnson was on the telephone with Leslie Williams and Pamela Williams via a three-way call shortly after Boyd was shot. Those pager and telephone records were never obtained by the police or defense counsel. No attempt was made by police to interview Johnson’s alibi witnesses or otherwise investigate the alibi evidence that was readily available.

Barrow and Robert Williams have signed sworn statements about the events of October 30, 1994, stating that Johnson was with them at 3907 Lafayette Avenue at the time Boyd was killed. Each remembers the call from Pamela Williams to Johnson, informing him that Boyd had been killed. (2009 Barrow Affidavit, p. 2; Robert Williams Declaration).

The CIU finds the accounts of Barrow, Robert Williams, Leslie Williams, and Johnson credible, especially in light of the testimony from Detective Nickerson that Johnson could travel from Lafayette Avenue, commit the murder of Boyd on Louisiana Avenue, and return to Lafayette in a matter of minutes. In reality, a roundtrip route to 3910 Louisiana would have taken more than twenty minutes.

In addition to the false testimony regarding the time and distance between the two locations, Detective Nickerson’s account ignored undisputed facts surrounding Johnson’s alibi that make his testimony implausible. It was a violation of ethical and constitutional duties for the ACA Dwight

Warren to present Detective Nickerson's testimony when he knew or should have known the testimony was false.

H. Juror Interviews

In early 2017, counsel for Johnson interviewed and obtained affidavits from three of the jurors who served at Johnson's trial. Each remembered and recognized the weak nature of the state's case, which caused jurors to have "questions about Mr. Johnson's guilt." (2017 Haessig Affidavit, p. 1-2)

The jurors were presented with evidence known to the state at the time of trial and not disclosed to the jury, and concluded that their verdict would not have been the same. The three interviewed jurors agreed that the payments made to eyewitness Elking were of critical importance to the integrity of the State's case. A juror stated that if she had been presented with such information, given the state's already-weak case, they "would not have voted to convict[.]" (2017 Dennis Affidavit, p. 1)

Additionally, jurors recalled Detective Nickerson's testimony that the drive from Johnson's alibi location and the crime scene was only 3-5 minutes. Given that Johnson's alibi was the only evidence presented to dispute his involvement in the shooting, it was a key piece of evidence discussed during deliberations. *Id.*

The jurors were presented with newly discovered evidence that was not presented to them at trial. Most importantly, they were presented with the sworn confessions of Campbell and Howard. Again, the jurors agreed that such information would have played an important role in their deliberations and eventual decision of whether to convict Johnson. (2017 Haessig Affidavit, p. 2; 2017 Young Affidavit, p. 1; 2017 Dennis Affidavit, p. 1-2)

The three interviewed jurors were presented with evidence that either seriously challenged the credibility of the State's case or altogether exculpated Johnson. Each juror was able to independently recall the important facts of the case and acknowledged the effects that the undisclosed evidence would have had on their ultimate decision to convict.

I. Legal Ethics Expert Lawrence Fox

During the joint investigation legal ethics expert Lawrence Fox (hereinafter "Fox") was asked to opine:

- (1) whether constitutional, professional, and/or ethical violations occurred in this case based on ; and if so,
- (2) whether this office has a duty to remedy those ethical and constitutional violations.

Presentation of False and Misleading Evidence

Fox found that the State committed numerous violations of ethics standards as outlined by the Missouri Rules of Professional Conduct. These infractions arose out of the State's deliberate

presentation of knowingly false and/or misleading evidence to the Court, in direct violation of prosecutorial duties set forth by the Supreme Court of the United States.²¹ See *Brady v. Maryland*, 373 U.S. 83 (1963); *Napue v. Illinois*, 360 U.S. 264, 269 (1959); *Giglio v. United States*, 405 U.S. 150, 153-54 (1972).

Payments to Elking

Perhaps, the greatest prosecutorial transgression is the failure to disclose more than \$4,000 in payments made to Mr. Elking in exchange for his identification and testimony. (STLCADISCL007). Under *Brady* and its progeny, the prosecution's duty to disclose extends to "material evidence tending to impeach any of its own witnesses." *Blair v. Armontrout*, 916 F.2d 1310, 1318 (8th Cir. 1990). Failure to disclose witness payments constitutes "an egregious case of prosecutorial suppression of evidence that was both favorable and material to the defense." *United States v. Librach*, 520 F.2d 550, 553 (8th Cir. 1975). In the present case, it is asserted that the prosecution never disclosed that Mr. Elking was promised payment, which Mr. Elking later admitted was a motivation during identification. (Elking Affidavit at 5). The prosecution further failed to disclose regular payments made to Mr. Elking after his identification of Mr. Johnson and testimony over the next several months. In sum, Mr. Elking estimated to counsel for Mr. Johnson that he received payments totaling approximately \$2,000 in exchange for his testimony. (Elking Affidavit at 7). None of that was ever disclosed to the defense.

Subsequent investigation and disclosure of documents by Circuit Attorney Gardner has revealed the amount that Mr. Elking received from the State in exchange for his testimony against Mr. Johnson was more than \$4,000. (STLCADISCL007). Finally, prosecutor Dwight Warren "took care of" outstanding traffic violations and bench warrants for Mr. Elking which were not disclosed to Mr. Johnson. (Elking 2019 Deposition at 120-21 ("And I remember [Dwight Warren] calling me back later on, maybe a couple days or whatever, maybe even that day and being like hey, look, they're taken care of. Stay out of trouble.")).

(Fox Affidavit, p. 11-12).

²¹"[S]uppression by the prosecution of [material] evidence favorable to an accused" is a due process violation, regardless of the good or bad faith of the prosecutor's withholding of such evidence. *Brady v. Maryland*, 373 U.S. at 87. The duty to disclose encompasses evidence which is either directly exculpatory or would impeach a state witness. *United States v. Bagley*, 473 U.S. 667, 676 (1985); *Giglio v. United States*, 405 U.S. 150, 154 (1972).

Missouri courts have embraced the *Brady* rule and its progeny. See *Merriweather v. State*, 294 S.W.3d 52 (Mo. banc 2009); Mo. Sup. Ct. R. 25.03. An evaluation of any *Brady* claim requires the Court to consider the "cumulative effect of excluded evidence in determining if a . . . violation occurred." *State ex rel. Engel v. Dormire*, 304 S.W.3d 120, 126 (Mo. banc 2010).

The Failure to Disclose Exculpatory and Impeachment Evidence Regarding Elking and Mock Prejudiced Johnson

Based on my review of the facts and relevant case materials, I have concluded, to a reasonable degree of professional certainty, the following:

- (1) since Mr. Johnson's apprehension in 1994, this case has been plagued with egregious prosecutorial and other state actors' wrongdoing including fabrication of motive evidence, presentation of misleading and inflammatory evidence (that was likely to mislead jurors to believe that Mr. Johnson committed the murder) and failure to correct false testimony;
- (2) for more than two decades, prosecutors failed to uphold their ethical and constitutional duties through their refusal to disclose detectives' fabrication of evidence, the compromised investigation of the culprit in Mr. Boyd's case, evidence of the extensive criminal history and history of cooperation by a jailhouse informant, and evidence of more than \$4,000 in payments made to Mr. Elking, the sole eyewitness, in exchange for his testimony; and,
- (3) the long, unremedied history of misconduct casts serious doubt on the fairness and outcome of Mr. Johnson's trial and, in my view, obligates the Circuit Attorney for the City of St. Louis, Kim Gardner and her colleagues to act to remedy Mr. Johnson's wrongful conviction.

This case presents one of the more stunning examples of prosecutors lapsing into the roles and rules that apply to everyday lawyers, forgetting their constitutional responsibilities as ministers of justice. As public servants and officers of the criminal justice system, prosecutors have a special duty to "represent the interest of society as a whole." *Ferri v. Ackerman*, 444 U.S. 193, 202-03 (1979); Missouri Rules of Professional Conduct r. 4-3.8 cmt. 1 (noting that a prosecutor "has the responsibility of a minister of justice and not simply that of an advocate"). Prosecutors, as state actors, have legal, ethical, and professional obligations to uphold a defendant's constitutional right to a fair trial and due process of law. See U.S. Const. amend. XIV ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law."); *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986) ("[T]he Constitution entitles a criminal defendant to a fair trial.").

(Fox Affidavit, p. 4-5).

Duty of the Circuit Attorney to Remedy the Ethical and Constitutional Violations

Fox found that these facts, considered collectively, rendered Johnson's conviction a manifest injustice which "undermine[d] confidence in the outcome of the trial." (*Id.* at 24) (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)). Because these constitutional errors presented "clear and convincing evidence" of Johnson's innocence, Fox's expert report indicates that this office is obligated under Model Rules of Professional Conduct 3.8(h) to remedy the conviction:

When a prosecutor becomes aware of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of a crime that the defendant did not commit—the position in which Circuit Attorney Gardner now finds herself—the prosecutor is obligated to seek to remedy the conviction. Model Rules of Prof'l Conduct r. 3.8(h). Prosecutors must not only “promptly disclose that evidence to an appropriate court,” Model Rules of Prof'l Conduct r. 3.8(g), but “must seek to remedy the conviction.” Model Rules of Prof'l Conduct r. 3.8 cmt. 8. Notably, a prosecutor's duty is not circumscribed by time or place. A prosecutor's duty to maintain the integrity of our justice system as a whole, *see* Missouri Rules of Prof'l Conduct r. 3.8 cmt. 1, obligates her to act to correct injustices, whether caused by her own actions or past actions of other lawyers in her office.

In summary, this case rested on prosecutorial misconduct and false testimony that resulted in substantial prejudice to Mr. Johnson. In the author's professional opinion, the official misconduct from the outset of the case deprived Mr. Johnson of a fair trial, and dismissal of his conviction is long overdue. *Cf. United States v. Babiar*, 390 F.3d 598, 600 (8th Cir. 2004) (“Where the defendant alleges prosecutorial misconduct, dismissal is proper if the defendant demonstrates flagrant misconduct and substantial prejudice.”). Kim Gardner, the Circuit Attorney for the City of St. Louis, has an unequivocal professional obligation and clear constitutional and ethical duties to seek to remedy Mr. Johnson's conviction.

(Fox Affidavit, p. 10-11, 15).

J. Johnson Interview

The CIU interviewed Johnson regarding the police investigation, trial, and post-conviction investigation, including the investigation undertaken by the CIU. It is the opinion of the CIU that Johnson is credible and his claim of innocence—maintained since his arrest—is supported by the evidence as discussed above. Further, Johnson's alibi evidence is credible, most of which was not presented to the jury, despite its availability.

VIII. These Errors Deprived Johnson Of A Fair Trial and Eroded the Integrity of the Conviction

The CIU has concluded that each of the above errors, on their own, likely deprived Johnson of his constitutional rights to due process and a fair trial. Together, the errors undermine confidence in Johnson's conviction and render the jury's verdict unreliable. In light of the overwhelming new evidence of Johnson's innocence, it is clear to the CIU that no reasonable juror would have convicted him if the new evidence had been presented at trial. *See Schlup v. Delo*, 513 U.S. at 327 (a petitioner meets the *Schlup* gateway “if he can show that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt in light of the new evidence.”) *see also Clay v. Dormire*, 37 S.W.3d 214, 217 (Mo. 2000)).

The Supreme Court declared decades ago that convictions based on prosecutorial misconduct such as concealing exculpatory evidence and presenting perjured testimony violate the rights granted to criminal defendants by the Constitution. The prosecutor's "obligation to govern impartially is as compelling as its obligation to govern at all." *Berger v. United States*, 295 U.S. 78, 88 (1935). "The prosecutor's role transcends that of an adversary: the prosecutor 'is the representative not of an ordinary party to a controversy, but of a sovereignty. . . whose interest. . . in a criminal prosecution is not that it shall win a case, but that justice shall be done.'" *United States v. Bagley*, 473 U.S. 667, 675 n. 6 (1985) (quoting *Berger*, 295 U.S. at 88)); *Miller v. United States*, 14 A.3d 1094, 1107 (D.C. 2011) ("the constitutional command of Brady unambiguously prescribes the prosecutor's priorities: The prosecutor's obligation is to seek justice before victory.")).

The CIU has investigated and determined that the State undermined its obligation to impartially obtain justice, denying Johnson a fair trial in two crucial ways. First, the State failed to disclose material, exculpatory evidence to defense counsel in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Second, the State knowingly permitted false evidence to be presented to the jury in violation of *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

The United States Supreme Court has repeatedly recognized that a prosecutor may not knowingly use false evidence, including false testimony, or allow it to go uncorrected when it appears. *Napue v. Illinois*, 360 U.S. 264, 269 (1959). The "deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice.'" *Giglio v. United States*, 405 U.S. 150, 153-54 (1972) (quoting *Mooney v. Holman*, 294 U.S. 103, 112 (1935)); see also *Pyle v. Kansas*, 317 U.S. 213, 216 (1942) (imprisonment resulting from perjured testimony, knowingly used by State authorities to obtain a conviction, and from the deliberate suppression by those same authorities of evidence favorable to him are a deprivation of rights guaranteed by the United States Constitution entitling a petitioner to release from custody).

The State's duty does not decay with time, and the Circuit Attorney remains obliged to correct constitutional violations of which she is aware. "When police or prosecutors conceal significant exculpatory or impeaching material in the State's possession, it is ordinarily incumbent on the State to set the record straight." *Banks v. Dretke*, 540 U.S. 668, 675-676 (2004).

Without Elking's manufactured identification, Johnson would never have been arrested or charged with this crime. There was no evidence linking him to the homicide until Elking identified him in a series of circumstances that are alarming and offend the most basic notions of fairness and justice. Johnson's alibi, solid though it was, was never investigated by police and no attempt to disprove or corroborate the alibi evidence was made by the State. In light of the circumstances of the crime and absence of a reliable identification, the police, at the very least, should have investigated Johnson's alibi.

The testimony of Mock, the State's incentivized informant, was and is not credible. His motive to lie, his undisclosed deal with the State, and his history of informing for his own benefit render his testimony unreliable. His undisclosed criminal history and his correspondence with the State only add to the CIU's conclusion that Mock testified falsely.

Finally, the CIU does not believe that Johnson volunteered a confession to Detective Campbell after he denied involvement at arrest, during questioning, throughout trial, and for the twenty-four years thereafter. Therefore, no credible evidence to support Johnson's conviction remains.

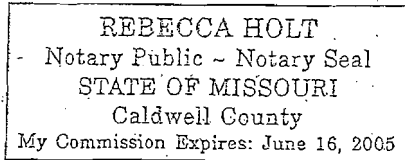
Johnson's case is ultimately about innocence. Johnson did not shoot Boyd and had nothing to do with Boyd's murder, and he should not be in prison for the crime. Imprisonment of an innocent person constitutes a "manifest injustice." *Amrine v. Roper*, 102 S.W.3d 541, 546-47 (Mo. 2003). Johnson's clear and convincing evidence of innocence satisfies the demanding *Amrine* standard and it satisfies the CIU. Accordingly, the Circuit Attorney is taking action to correct Johnson's sentence by filing a Motion for New Trial.

AFFIDAVIT OF JAMES HOWARD

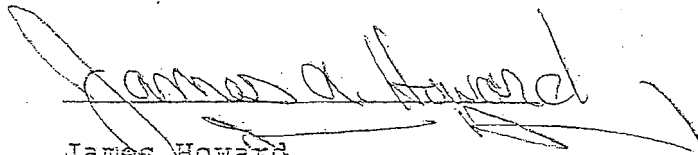
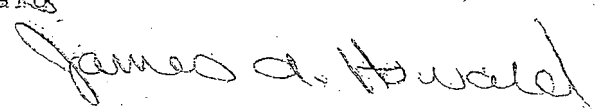
I, James Howard, being duly sworn upon my oath, depose and state the following is true and accurate to the best of my knowledge, information and belief.

1. On October 30, 1994, at or around 9:00 p.m., Phillip Campbell and I caused the death of Marcus Boyd by shooting him at 3910 Louisiana.
2. Immediately after the incident, we left the scene and returned to my house, located at 3944 Louisiana.
3. Phillip stayed at my house until the afternoon of November 3, 1994 when he stated he was going to catch the bus home.
4. I later learned that Phillip and Lamar were arrested together some time after and that they had both been charged with killing Marcus Boyd's murder.
5. Eight months later I learned Lamar was convicted of Boyd's murder and sentenced to life without parole. I learned sometime after that Phillip plead guilty to Boyd's murder and received only seven years.
6. I understand Phillip has since come forward on Lamar's behalf, stating he and I committed Boyd's murder. Until now I had not been willing to do so.

7. I declare under the penalty of perjury that Lamar Johnson is not responsible for the murder of Marcus Boyd.



Rebecca Holt 12-3-02


James Howard


Subscribed and sworn before me this 29 day of
October 2002.

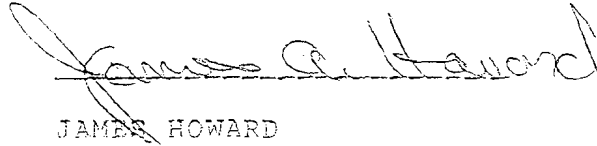
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AFFIDAVIT OF JAMES HOWARD

I, James Howard, being duly sworn and upon my oath, depose and state the following is true and accurate to the best of my knowledge, information and belief.

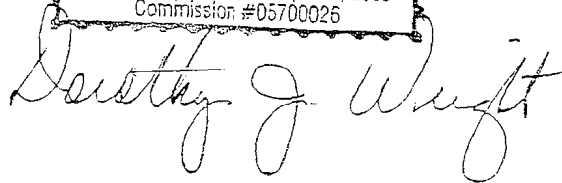
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4. I later learned that Phillip and Lamar were arrested together some time after and that they had both been charged with killing Marcus Boyd.
5. Eight months later I learned Lamar was convicted of Boyd's murder and sentenced to life without parole. I learned sometime after that Phillip pled guilty to Boyd's murder and received only seven years.
6. I understand Phillip has since come forward on Lamar's behalf, stating that he and I committed Boyd's murder.
7. Had I been contacted by someone, I would have come forward sooner on Lamar's behalf as well.
8. I declare under the penalty of perjury that Lamar Johnson is not responsible for the murder of Marcus Boyd.

COPY


JAMES HOWARD

Subscribed and sworn before me this 27th day of
October, 2005.

DOROTHY J. WRIGHT
Notary Public - Notary Seal
State of Missouri - County of Dunklin
My Commission Expires Apr. 20, 2009
Commission #05700026

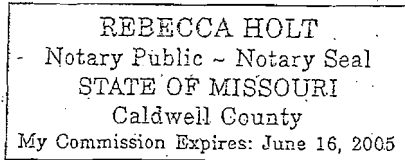


AFFIDAVIT OF JAMES HOWARD

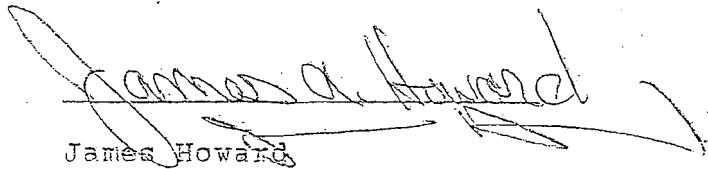
I, James Howard, being duly sworn upon my oath, depose and state the following is true and accurate to the best of my knowledge, information and belief.

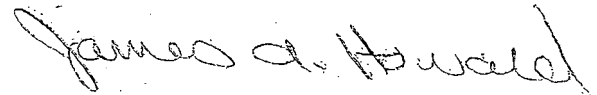
1. On October 30, 1994, at or around 9:00 p.m., Phillip Campbell and I caused the death of Marcus Boyd by shooting him at 3910 Louisiana.
2. Immediately after the incident, we left the scene and returned to my house, located at 3944 Louisiana.
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7. I declare under the penalty of perjury that Lamar Johnson is not responsible for the murder of Marcus Boyd.



Rebecca Holt 12-3-02


James Howard



Subscribed and sworn before me this 29 day of
October 2002.

James Howard Affidavit

State of Missouri)

County of Washington)

I, JAMES A. HOWARD, first being duly sworn, on my oath state the following facts:

On Oct 30, 1994, I was living with my mom and dad in their house in the 3900 block of Louisiana.

On 10/30/94, ^{J.H. friend} ~~my cousin~~, Sirone Spates, AKA: Puffy, was recovering from a gun shot wound. Puffy had come out of the hospital several weeks earlier, wearing a neck brace and a "halo" around his head, to keep his head from moving. The gun shot wound had damaged his spine.

Prior to my ^{J.H. friend} ~~cousin~~ Puffy's gun shot injury, he had conducted drug business with Marcus Boyd who lived up the street on Louisiana. Puffy and Marcus Boyd had apparently agreed that Marcus would keep the "crumbs" from their crack cocaine sells and eventually Marcus would return those accumulated "crumbs" to Puffy, or eventually pay Puffy for these "crumbs." These "crumbs" resulted from the cutting up of larger crack cocaine cakes. The crumbs could be saved, and eventually grow into a considerable amount of crack. From Puffy, I understood that Marcus had a safe at his house, and that these "crumbs" were kept in his safe.

When Puffy got out of the hospital, he needed money, and asked Marcus Boyd to pay him for these "crumbs" or give Puffy the "crumbs" so he could sell them. Puffy told me that Marcus kept putting him off, and Marcus never provided Puffy any money, or crack cocaine "crumbs" from their previous transactions. I understood from Puffy that this accumulation of "crumbs" was probably worth several hundred dollars, but no more than \$1,000.

A few days prior to 10/30/94, I recall that Puffy had his "Halo" removed, but was still in a neck brace. With his halo removed, Puffy had decided he was going to walk up the street and confront Marcus Boyd about the money or crack "crumbs" he felt Marcus owed him.

When Puffy announced his intentions, on that Sunday, Oct 30, 1994, I told Puffy not to take a chance of hurting himself. I volunteered along with my friend Phillip Campbell to go up the street and confront Marcus Boyd. I felt Marcus had disrespected my ^{J.H. friend} ~~cousin~~, Puffy, by ignoring Puffy's request for the money Puffy felt Marcus owed him.

Phillip Campbell and I had spent that day, a Sunday, selling drugs, smoking weed and drinking alcohol.

I had a lot of black clothing in my house due to my affiliation with the neighborhood group, "The Darkside." Phillip Campbell and myself put on black sweat pants, black hoodies, and black ski masks. The ski masks were the "Ninja" style masks, which covered the entire head, and had one large hole in the face for the two eyes. These masks were made out of thin, polyester material.

I did not know Marcus Boyd personally, but I knew who he was and that he lived up the street. I had no intention of killing Marcus Boyd. I wanted to teach Marcus a lesson, and also rob him, so that I could get the money Marcus owed my cousin Puffy.

About that time two friends came by my house to visit. After hearing us talk about Marcus Boyd, these friends said they had just seen Marcus sitting in front of his house on his porch with some white guy. Phillip Campbell and I decided this would be a good time to approach Marcus and get him upstairs so we could rob him and clean out his safe.

Campbell and I left my mom's house, and walked north on Louisiana along the sidewalk on the same side of the street as Marcus Boyd's house. When we got to the porch, Campbell and I rushed up the stairs with guns out. I had a long-barrell .38 revolver. Campbell had a smaller .25 automatic. Marcus was sitting on the left side, near the top, and the white guy was on the right side. Campbell and I both rushed Marcus and tried to get him to go upstairs.

I saw that the door to Boyd's apartment, on the left side, was open, and light from his apartment was illuminating the porch. I told Marcus, "You know what time it is. We're going upstairs."

Instead of complying, Marcus began struggling with me while he stayed in his sitting position. I had grabbed Boyd's shirt with my free hand and held the .38 revolver in my other hand. Campbell was supposed to be watching the white guy, but Campbell turned his attention to Marcus when Marcus began struggling with me.

Almost immediately, Campbell reached down, placed his .25 cal pistol against the side of Marcus and fired off several shots into Marcus. About this time, my gun also discharged, but I wasn't sure where the bullet went. I then cocked the gun and while holding Marcus' head, shot into the back of Boyd's neck. With that shot, Marcus stopped struggling.

During this time, the white guy could have run unnoticed but he didn't. I remember seeing the white guy stepping back on the upper porch near the door of the other apartment. I don't recall saying anything specific to the white guy. I do recall this white guy stood about 6'0" or 6'1."

I do not recall Campbell saying anything to the white guy. Campbell stopped messing with the white guy as soon as he saw Boyd struggling, and Campbell then turned and shot Boyd.

When Campbell and I turned to run, the white guy was still on the top of the porch. Although I don't recall saying anything to the white guy, I might have taken a step toward the white guy, and thought about eliminating him as a witness. Then I thought, fuck it, and we turned to go. I knew I still had four shots left in my gun. I think Campbell also said, "Let's go."

I remember thinking I had no reason to kill the white guy, and thought I might as well spare him. My intent wasn't to kill Marcus, but to get something from him. It really fucked me up that Campbell started shooting that guy without letting me hit him on the head a couple of times and try to gain his cooperation. I was expecting Boyd to comply and let us get into his safe.

After Campbell and I left the porch, we ran down the gangway between houses and then jumped fences through back yards all the way back to my mom's back door. I do not know what happened to the white guy, since he was still on the porch when Campbell and I left the scene.

Back at my house, we took off our black clothes and I put them in the wash with soap and bleach. I then took the guns outside and hid them under a fir tree in front of my mom's house and covered the guns with brush. After the police came and filled the street in front of Marcus' house, Phillip left and walked up Osage toward Grand, away from the police.

The next day, I removed the guns from beneath the fir tree, put them in a pillowcase, and hid them in a friend's basement. About two weeks later, I took the guns and sold them for cash to a stranger on Beacon St on the city's north side.

My ^{friend J.H.} ~~cousin~~ Puffy died the following year, in 1995.

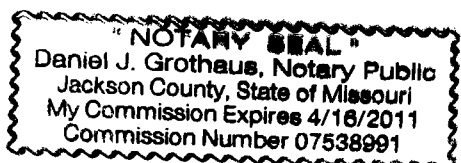
I feel very bad about what happened to Marcus Boyd. I am sorry for my involvement in his death. Lamar Johnson was not involved in the death of Marcus Boyd. I know Lamar Johnson is innocent of that crime because I was there and Lamar Johnson was not there.

I have read this affidavit consisting of 3 page(s) and make this statement of my own free will without promise or threat. Further affiant saith not.

James A. Howard
James Howard #341535

Subscribed and sworn to before me this 21ST day of August, 2009.

Daniel J. Grothaus
Notary Public in and for the State of Missouri



my commission expires April 16, 2011

COPY

AFFIDAVIT OF PHILLIP CAMPBELL

I, Phillip Campbell being duly sworn upon my oath, depose, and state the following is true and accurate to the best of my knowledge, information and belief:

- (1) On October 30, 1994, at or around 9:00 p.m. James Howard and I (a.k.a. B.A.) caused the death of Markus Boyd by shooting him at 3910 Louisiana;
- (2) Immediately after the incident, we left the scene, and returned to B.A. house which is located at 3944 Louisiana;
- (3) I stayed at this address until the afternoon of Nov 3, 1994 and walked to the corner of Chippewa and Grand. As I awaited for the bus to go home, I noticed Lamar Johnson in his 1986 gray Oldsmobile Delta 88, heading northbound;
- (4) Since Lamar Johnson was heading in the same direction I was I waived my hands and arms to get his attention, so I could possibly get a ride home;
- (5) Lamar Johnson stopped and agreed to take me home. As we were in route on Grand, we were pulled over by the police and arrested for the murder of Markus Boyd.

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- (6) During the pendency of our trial. I never told Lamar Johnson that I knew who was really responsible for the death of Markus Boyd. I decided
- (7) After Lamar Johnson's conviction on July 12, I wrote him, Lamar, a letter explaining what happened, and attempting to sympathise for the wrongful situation I had gotten him into;
- (8) Lamar then wrote me a letter demanding that I come forward or he was going to give the letter I sent him to his attorney.
- (9) I then responded in a threatening manner in which a heated argument erupted throughout our correspondence;
- (10) I later changed my mind, because I felt particularly responsible for his, Lamar, wrongful incarceration and told him that I would come forward. My attorney however did not feel that was in my best interest, before the disposition of my pending case:

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(11) Lamar was eventually sent to prison and I plead guilty to a lesser charge:

Phillip Campbell
Phillip Campbell
signature

LARRY SCHUSTER
Notary Public - Notary Seal
State of Missouri
County of Cooper
My Commission Expires 6-21-2000

Subscribed and sworn before me this 9 day of AUGUST 1976.

PC

DECLARATION OF PHILLIP CAMPBELL

I, Phillip Campbell, being duly sworn, of lawful age and of sound mind, states as follows:

1. On October 30, 1994, I was visiting a friend, James, around 11 am or 12 noon that day. Throughout that day, the two of us drank Thunderbird wine mixed with Kool-aid, beer, and smoked marijuana.
2. On that day, James told me that a few days earlier, a man living up the street, named Marcus Boyd, had been abusive toward James' cousin, Sherwood Space, aka Puffy. James told me that his cousin and Marcus Boyd had exchanged words earlier that week, but there was no ongoing feud. I did not know Marcus Boyd before James mentioned him that day. Nor did I know before that day, that Marcus Boyd lived up the street from James with his wife and their small child. I had never met Marcus Boyd before the day of the shooting. I'm not sure if James knew Marcus Boyd either.
3. James' cousin, Puffy, could not defend himself at that time because he was wearing a full head/neck brace. Puffy had been shot in the face sometime earlier. As a result of the damage to his spine, Puffy had to wear a full head/neck brace. It was the type of brace worn over his shoulders, with a circular bar around his head, and rods, which kept his head and neck from moving. Puffy died less than a year later, in 1995.
4. James was upset about how he heard Marcus Boyd had treated his cousin. That day, James and I spent a lot of time discussing how we would "get even" with Boyd. Our intent was to scare Boyd by beating him up. We intended to beat him

PC

up badly and send him a strong message. We had no intention of robbing or killing Boyd. James and I thought Boyd needed to be punished for what he reportedly said and did to James' cousin, Puffy.

5. Both James and I had pistols. I had a .25 cal semi-automatic handgun that was small and black with a brown handle. James had .38 cal. revolver, which was a bigger gun than my .25.
6. That evening, we put on some dark clothes and wore black, wool-like winter ski masks, which had a large hole for the face. These masks were definitely woolen, and not smooth polyester masks. The masks could be pulled up over the nose, revealing not much more than our eyes.
7. Our plan was to walk down the alley, behind the houses on the east side of Louisiana. We would come through the gangway, between buildings on the north side of Marcus Boyd's apartment and knock on his door. We planned to rush whoever answered the door, run into Boyd's apartment, and beat him up inside his apartment.
8. When we reached Marcus Boyd's apartment, we didn't expect him to be outside on his porch. We had looked up the street earlier and he wasn't outside. When we ran around the side of his house to his front porch, we were surprised to see Boyd sitting there with another man, a white guy. They were both sitting on the top step of the porch. There was no porch light on at Boyd's house but it wasn't completely dark.
9. James ran up the steps toward Marcus Boyd with his gun. Boyd grabbed James with both arms and hugged James around the knees. I heard James yelling, "Let

PC

go, let go” and I saw James hit Boyd’s head with the butt or barrel of his gun.

James hit Boyd a couple of times on the head with his gun, but Boyd wouldn’t let go, so James shot Marcus somewhere. After the gun shot, Boyd let go and fell backwards. James then shot Boyd again after he had fallen back.

10. Meanwhile, I had taken a few steps up the porch and pointed my gun at the white guy sitting to the left of Boyd and I grabbed the man’s shoulder. I did not say anything to this man, I just pointed my gun at him. This white guy froze, and acted like he was in shock. After James shot Boyd a second time, I turned toward Boyd and shot him several times. As I shot Boyd, the white man jumped up and ran past me.

11. During this incident, I never saw anyone else on the street or the sidewalk at anytime. At the time of the shooting, I do not think we were drunk, but we were pretty messed up.

12. After the shooting, James and I ran back down the gangway to the alley and back to James’ house. There was no one else home at James’ house. I left James’ house and walked home to my girlfriend’s house in the 1600 block of Lawrence. When I got home, my girlfriend, Tasha Johnson, was at home with her children. I did not tell her about killing Boyd.

13. I wore the same black clothes home, where they were eventually washed and kept there. When arrested four days later, the police never searched my house. If they had, they would have found those clothes in the hamper, along with the ski mask. I put my .25 handgun in my top dresser drawer and left it there. It was still there when I was arrested.

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14. I did not know where Lamar Johnson was, the night James and I killed Marcus Boyd.

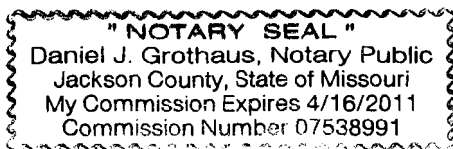
15. Later on, I told other people that James and I shot Marcus Boyd. I never told anyone that Lamar Johnson was involved in killing Marcus Boyd because that was not true. Some of the people I told about this murder were: Anthony Cooper, Lamont McClain, and Stanford Morris.

The foregoing is true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT


Phillip Campbell

In witness thereof, I have here unto subscribed my name and affixed my official seal this April day of 5, 2009.



 4/5/09
Notary Public

my commission expires 4-16-2011

William Mock Criminal History Summary (through 1994)

Arrest/ Ticket	Conviction	Description	Sentence	Reference Numbers	Event History	Location	Source	Disclosed?
5/10/76		Stealing <\$50 (Misd)		Case #CR76-120	5/8/76 – Crime committed 5/10/76 – Arrested, charged, unable to make recognizance, committed to hold for 5/25 trial 5/17/76 – Released on bond	Platte County (MO)	Platte Cty SO Platte Cty Jail	No
5/10/76	8/24/76 – pled guilty to 1 count	2 counts Bad Checks (A/Misd or Felony?) – 1 dismissed	60 days (served 26)	Case #CR76-128	3/25/76 – Crime committed 5/10/76 – Arrested 5/17/76 – Released on bond 8/24/76 – Pled guilty, sentenced to 60 days concurrent with CR76-155 9/13/76 – Released, sentence completed	Platte County (MO)	Platte Cty SO Platte Cty Jail	No
5/25/76		Disturbing the peace (A/Misd)	Charges possibly dismissed	Case #CR76-155	5/24/76 – Arrest warrant issued 5/25/76 – Arrested, released on bond 6/8/76 – Preliminary hearing	Platte County (MO)	Platte Cty SO Platte Cty Jail	
7/1/76	N/A - dismissed	Disturbing the peace	Charges dismissed	Case #CR76-193	7/1/76 – Arrested and released	Platte County (MO)	Platte Cty SO Platte Cty Jail	No
8/24/76	8/24/76	Disturbing the peace, Fraud	60 days x 2 – SES given 6 months probation		9/13/76 – Released and given 6 months probation	Platt County (MO)	Platte Cty SO Platte Cty Jail	No
1977	11/2/78	Burglary 1 (Felony)	2 years – given probation, revoked	Case #21777	9/28/84 - Probation revoked, ordered 2 yrs in prison 10/4/84 – Received at CA DOC 1/9/85 – 8/15/85: Felony warrant hold from Johnson Cty, KS for K45286 and removed 9/20/85 – 5/21/87: In and out of custody 12/2/86 – 5/12/87: Warrant hold from Contra Costa Cty for #862609J and removed 5/21/87 – Released/discharged for this conviction	Contra Costa County (CA)	CA DOC	Deposition (7/5/95) Trial p224, 261
8/04/78		Driving while Suspended, Out of State License		Case #CR78- 3595, 3596	8/4/78 – Crime committed, arrested, unable to make bail, committed to await trial 9/13 8/18/77 – Posted bond, released to KCPD custody for 3 probation violations	Platte County (MO)	Platte Cty SO Platte Cty Jail	No
6/25/80	7/22/80 & 8/12/80 – pled guilty	Criminal Mischief 4th Intent to Damage Property (E/Felony) Assault 3 rd Intent to Cause Physical Injury (A/Misd) Resisting Arrest (A/Misd) – Dismissed Disorderly Conduct (Misd)	Time served (49 days)	#76244-24	6/10/80 – Charged with Assault 3rd, no bail because of Fugitive from Justice in CA 6/19/80 – Released in Court 6/26/80 – Temporary Commitment for Criminal Mischief 3rd, Resisting Arrest, and Assault 3rd 7/15/80 – Resisting Arrest dismissed 7/22/80 – Pled guilty to Assault 3rd and sentenced to unconditional discharge 8/12/80 – Pled guilty to Criminal Mischief 4th and sentenced to time served. Released.	Dutchess County (NY)	Dutchess Cty SO Poughkeepsie City Court	No

William Mock Criminal History Summary (through 1994)

Arrest/ Ticket	Conviction	Description	Sentence	Reference Numbers	Event History	Location	Source	Disclosed?
	12/12/80	Driving Without a License (Misd)		Case #2976083		Jackson County (MO)	Johnson Cty Criminal Dept PSI Rpt	No
10/21/81	N/A – did not charge	Larceny >\$150	N/A – did not charge		10/21/81 – Held for 20 hours	Platte County (MO)	Platte Cty SO Platte Cty Jail	No
1/23/82		Assault, Property Destruction			1/23/82 – Arrest warrant issued, arrested, bench warrant in Poughkeepsie noted for Criminal Mischief 3, appeared and unable to make bond, committed to await trial 2/23 1/25/82 – Released on bond	Platte City (MO)	Platte Cty SO Platte Cty Jail	No
10/26/82		Unknown – Platte City Commit			11/5/82 – Released	Platte County (MO)	Platte Cty Jail	No
3/28/83		Urinating in Public (C/Misd)		PD: 10742 Citation #C95593	4/14/83 – Court date	Kansas City (KS)	KCK PD	No
5/26/83		Fugitive from Justice (K44531)		Case #CR183-468 F Traffic: CR 18210437T	5/26/83 – Cited for expired vehicle, complaint filed, and warrant issued for hold from Johnson Cty K44531 6/2/83 – Released, waives extradition to Johnson Cty, KS	Platte County (MO)	Platte Cty SO Platte Cty Jail Platte Cty Court	No
6/2/83	N/A – dismissed	Theft (Felony) > \$50	Case dismissed	Case #K0044531	5/9-5/12/83 – Crime is committed 5/20/83 – Charged, warrant issued 6/2/83 – Transferred from Platte to Johnson Cty 7/13/83 – Arraignment, pled not guilty 7/20/83 – Released on bond 8/16/83 – Case dismissed on State's motion	Johnson County (KS)	Johnson Cty Court	No
7/22/83		Failure to Pay Municipal Fine			7/26/83 – Released	Platte County (MO)	Platte Cty SO Platte Cty Jail	No
10/30/83	N/A – dismissed	Theft (Felony) - same crime as 44531	Case dismissed w/o prejudice	Case #K0045286	5/9-5/12/83 – Crime is committed 10/4/83 – Charged, warrant issued 10/17/83 – Arrested 10/30/83 – Released on bond 11/17/83 – FTA, bond forfeited, warrant issued 1/9/85 – Inmate notice that Mock is imprisoned in Correctional Training Facility in Soledad, CA, and requests final disposition on #45286 and offer to deliver temporary custody 8/22/85 – FTA, warrant recalled, case dismissed w/o prejudice	Johnson County (KS)	Johnson Cty Court CA DOC	No
11/20/83	11/21/83 – pled guilty	Attempt to Assault (Misd)	30 days – probated for 1 yr	Case #0G447949	11/21/83 – Pleads guilty	Kansas City (MO)	KC Municipal Court	No

William Mock Criminal History Summary (through 1994)

Arrest/ Ticket	Conviction	Description	Sentence	Reference Numbers	Event History	Location	Source	Disclosed?
	12/10/86	Theft (A/Misd)		7867		Solano County (CA)	Johnson Cty PSI Rpt	No
		Theft by Receiving - Arrested for Larceny from Buildings		PD: 8781524	8/14/87 – Reported 9/10/87 – Charged	Portland (OR)	Portland PD	No
8/25/87	N/A – Never convicted	Forgery 1st (C/Felony) – Arrested for Fraud Unspecified		Case #88-03- 31158 PD: 8785532 Citation #B153556	8/11/87 – Crime committed 8/24/87 – Reported fraud-unspecified 8/25/87 – Arrested, charged 3/16/88 – Indicted, warrant issued. Never arrested – warrant remained active until at least '97. 6/19/89 – Court receives letter from Mock requesting speedy trial or dismissal 7/16/90 – Mock files motion to dismiss	Portland (OR)	Portland PD Multnomah Court	No
		Trespass II		PD: 8785587 Citation #B153555	8/25/87 – Charged	Portland (OR)	Portland PD	No
		Theft by Receiving – Arrested for Larceny Unspecified		PD: 8791165	9/9/87 – Crime committed, reported 9/10/87 – Charged	Portland (OR)	Portland PD	No
		Theft II – Arrested for Larceny/Shoplifting		PD: 8791908 Citation #B134724	9/10/87 – Crime committed, reported, charged	Portland (OR)	Portland PD	No
	N/A – dismissed	Burglary II (C/Felony) Attempted Theft II (B/Misd) Possession of a Controlled Substance – Dropped	Case eventually dismissed over 10 years later	Case #87-10- 35855 PD: 87106231 Citation #B161768	10/21/87 – Crime committed, information filed 10/28/87 – Indictment 10/29/87 – Arrest warrant issued 11/9/87 – Arraignment, pleads not guilty, possession charge gone 11/10/87 – Released on bond 12/16/87 – Bench warrant issued for FTA 6/19/89 – Court receives letter from Mock requesting speedy trial or dismissal 7/16/90 – Mock files motion to dismiss 1/31/98 – Case dismissed	Portland (OR)	Portland PD Multnomah Courts	No
		2 counts Criminal Trespass II (C/Misd), Harassment (Misd) – Arrested for Simple Assault and 2 counts Trespassing		PD: 87107823, 87107824 Citations #B121076, B121077, 121078	10/25/87 – Crime committed, reported 10/29/87 – Charged/ticketed	Portland (OR)	Portland PD Multnomah Courts	No
N/A	11/10/88 – pled guilty	Harassment (A/Misd)	90 days (time served)	CR88-987-M	7/13/88 – Complaint filed by victims, warrant issued 8/30/88 – Appears in court, requests jury trial 11/10/88 – Pleads guilty, released time served	Platte County (MO)	Platte Cty Court	No

William Mock Criminal History Summary (through 1994)

Arrest/ Ticket	Conviction	Description	Sentence	Reference Numbers	Event History	Location	Source	Disclosed?
8/1/88	2/5/91 – pled guilty	Simple Assault/Disturbing the Peace	30 days – suspended for 2 years probation	Case #0G589571	2/5/91 – Pleads guilty	Kansas City (MO)	KC Muni Court Johnson Cty PSI Rpt	
8/2/88	11/10/88 – pled guilty	Tampering 1st (Felony)	2 years in DOC – SES, granted 2 (or 3?) years probation with conditions	Case: CR88- 1083-F PD: 88-107930	8/2/88 – Crime occurred, charges filed, warrant issued, arrested 11/10/88 – Pleads guilty, sentenced to 2 yrs in DOC w/ SES – granted 2/3 yrs probation, released to KCPD 1/10/89 – Probation suspended, warrant issued for violation, arrested 4/13 4/20/89 – Admits probation violation, probation revoked, ordered to serve 2 yr sentence in DOC 5/10/89 – Delivered to DOC 5/1/90 – 6/1/90 – Granted parole, revoked 1/1/91 – Released under a Director's Discharge	Platte County (MO)	MO Hwy Patrol MO DOC KCPD Platte Cty SO Platte Cty Jail Clay Cty Court	Deposition (7/5/95) Trial p224,261
N/A		Assault (while incarcerated)			10/29/88 – Mock assaults & severely beats fellow inmate	Platte County (MO)	Platte Cty Jail	No
12/16/88	2/5/91 – pled guilty	2 counts Destruction of Property	180 days – probated for 2 yrs	Case #0G639154, 0G639156	2/5/91 – Pled guilty	Kansas City (MO)	KC Municipal Court	No
12/17/88	12/13/90 – pled guilty	Refusal to Pay Fare	30 days	Case #0G655876	12/13/90 – Pled guilty, received 30 days	Kansas City (MO)	KC Municipal Court	No
2/26/89	5/2/89 – pled guilty	Receiving Stolen Property (A/Misd)	6 months concurrent with existing MO DOC time	Case #CR189- 294M	2/26/89 – Information filed, warrant issued, arrested, released on bond 3/14/89 – FTA, warrant issued 3/17/89 – Released on bond 4/12/89 – FTA, warrant issued 4/13/89 - Arrested 5/2/89 – Pled guilty, received 6 months concurrent with existing MO DOC time Note: Case under Alias, James C. Robb	Clay County (MO)	MO Hwy Patrol Clay Cty Court Platte Cty Jail	No
3/2/89		Aggravated Assault – reduced to Possession of a Deadly Weapon (Misd)		PD #03029 000753 Citation: 187442	3/2/89 – Crime occurred, arrested Note: Case under Alias, James C. Robb	Kansas City (KS)	KCK PD	No
4/21/89	12/13/90 – pled guilty	Larceny <\$50	30 days	Case #0G638039	4/21/89 – Charged/ticketed 12/13/90 – Pled guilty, received 30 days	Kansas City (MO)	KC Municipal Court	No
5/11/90	2/5/91 – pled guilty	Escape (Misd)	30 days	Case #0G739746	5/11/90 – Charged/ticketed 2/5/91 – Pled guilty	Kansas City (MO)	KC Municipal Court	No
1/2/91	2/5/91 – pled guilty	Harassment (A/Misd)	360 days – SES, granted 1 year probation w/ conditions, 30 days	Case #CR191-12- M	1/2/91 – Charges filed, warrant issued, arrested	Platte County (MO)	Platte Cty SO Platte Cty Court MO Hwy Patrol Platte Cty Jail	Deposition (7/5/95) Trial p263

William Mock Criminal History Summary (through 1994)

Arrest/ Ticket	Conviction	Description	Sentence	Reference Numbers	Event History	Location	Source	Disclosed?
			shock w/ credit for time served		2/5/91 – Pled guilty, sentenced to 360 days w/ SES - 1 yr probation, 30 days shock, time served, released to KCPD 3/5/91 – FTA, probation suspended, warrant issued 4/9/91 – Arrested for FTA, released 4/23/91 – Probation violation due to CR91- 640 & CR91-641 6/18/91 – FTA, warrant issued 7/1/91 – Arrested for FTA, probation suspended, committed to await trial 7/9/91 – Probation revoked, sentenced to 180 days in jail concurrent w/ CR 191-640. 7/31/91 – Released on house arrest 8/26/91 – Escaped from electronic shackling 8/27/91 – Warrant issued, no bond order 9/5/91 – Arrested for failure to comply & incarcerated for 35 days 10/15/91 – Released after serving 107 days 11/3/93 – Defendant discharged			
3/28/91	3/4/99 – pled guilty	DWI	\$1000 fine and 365 days	Ticket #001788927	3/4/99 – pleads guilty, received \$1000 fine and 365 days	KS	MO MV	No
	4/xx/91	Stealing	6 months		No Court Record	Platte County (MO)	Platte Cty Jail Platte Co Intake Screening	No
4/16/91	7/9/91 – pled guilty	DWI	Received SIS – 2 years probation, supervised & monitored by Midwest ADP	Case #CCR91- 641-M Ticket #901006159 Complaint #4913591	4/17/91 – Released on bond 6/18/91 – FTA, bond forfeited, warrant issued 7/1/91 – Arrested for FTA 7/9/91 – Pled guilty, received SIS – probation for 2 yrs monitored by Midwest ADP 7/31/91 – Released on house arrest 8/26/91 – Escaped from electronic shackling 8/27/91 – Warrant issued, no bond order 8/28/91 – Probation continued, reinstated house arrest 1/28/92 – Probation suspended, warrant issued 2/1/92 – Arrested for FTA 2/5/92 – Released back on probation 9/23/92 – Admits violation, probation reinstated for an additional year 3/3/93 – FTA, warrant issued	Platte County (MO)	Platte Cty Court Platte Cty SO Platte Cty Jail MO MV MO Hwy Patrol CaseNet	No

William Mock Criminal History Summary (through 1994)

Arrest/ Ticket	Conviction	Description	Sentence	Reference Numbers	Event History	Location	Source	Disclosed?
					3/19/93 – Transferred to Platte Cty from Jackson Cty 3/20/93 – Posts bond, released to KCPD 4/23/93 – Platte Cty Court modifies probation to terminate early on 7/9/93 4/30/93 – Arrested for FTA 5/5/93 – Appears in court, advised of violation on 12/16, committed to jail 5/12/93 – Admits violation, sentenced to 90 days in jail, credited 55 days 6/24/93 – Released, sentence complete			
4/16/91	7/9/91 – pled guilty	Resisting Arrest (A/Misd)	180 days concurrent w/ CR191-12-M – discharged from sentence early	Case #CR191- 640-M	4/17/91 – Information filed, released on bond 6/18/91 – FTA, bond forfeited, warrant issued 7/1/91 – Arrested for FTA 7/9/91 – Pled guilty, sentenced to 180 days concurrent with CR191-12-M 7/31/91 – Released on house arrest 8/26/91 – Escaped from electronic shackling 8/27/91 – Warrant issued, no bond order 8/28/91 – Probation continued, reinstated house arrest 9/5/91 – Arrested for failure to comply 10/5/91 – Released 2/5/95 – Discharged from sentence in this case.	Platte County (MO)	Platte Cty Court Platte Cty SO Platte Cty Jail MO MV MO Hwy Patrol	Deposition (7/5/95)
		Speeding	Surrender driver's license	Case #CR191- 2811T	6/18/91 – FTA, warrant issued 7/1/91 – Arrested for FTA 7/31/91 – Released on house arrest	Platte County (MO)	Platte Cty Court Platte Cty SO Platte Cty Jail	No
	7/10/91	Speeding		Court ID: 26931017 Ticket #000099999		Kansas City (MO)	MO MV Municipal Court	No
8/24/91	8/27/91 – pled guilty	Simple Assault	30 days – probated 1 yr	Case #0G774973	8/27/91 – Pleads guilty, receives 30 days – probated to 1 year	Kansas City (MO)	KC Municipal Court	No
8/26/91		Domestic Violence Charge				Platte County (MO)	Platte Cty Court Platte Cty Jail	No
9/5/91		DUI, Failure to Signal		Ticket #6566774		Jackson County (MO)	MO MV	No
9/5/91	10/28/92 – pled guilty	Simple Assault	Fined \$52	Case #0G780550	10/28/92 – Pleads guilty, receives fine	Jackson County (MO)	MO MV KC Municipal Court	No
10/22/91	11/29/93 – pled guilty	DWI 3 rd Offense (B/Misd), DWR (Misd)	30 days (DWI), 2 days (DWR), receives SES –	Case #22919- 076799 PD: 91-167153	10/23/91 – Information filed 12/16/91 – FTA, arrest warrant issued	Saint Louis (MO)	St. Louis PD CaseNet St. Louis Court	No

William Mock Criminal History Summary (through 1994)

Arrest/ Ticket	Conviction	Description	Sentence	Reference Numbers	Event History	Location	Source	Disclosed?
			1 year unsupervised probation	Ticket #900752546	11/29/93 – Arraigned, pled guilty, sentenced to 30 days (DWI), 2 days (DWR) & receives SES w/ 1 year unsupervised probation, DL revoked 11/29/94 – Probation successfully completed		MO MV	
N/A	1/8/92	Protective Order against Mock	Protective order against Mock – 6 months	DR91-13401	12/25/91 – Mock allegedly breaks into victims' house, threatens her, steals money 12/26/91 – Protective order filed 1/8/92 – Protective order issued – 6 months 1/24/92 – Protective order violated (see 929-011743)	Jackson County (MO)	MO Courts	No
1/25/92		Tampering 1 (C/Felony), Violation of Order of Protection (A/Misd)		Case #92-011743	3/23/92 – Complaint filed	Jackson County (MO)	Jackson Cty Court	No
	3/25/92	Auto Burglary (Felony)		Case #CR1992-01729		Maricopa County (AZ)	Johnson Cty PSI Rpt	No
2/8/92		Giving False Information, Fail to Signal Left Turn		Tickets #6745-794, 6745-791	10/8/92 – Pleads guilty to DWI		MO MV	No
2/8/92	10/8/92 – pled guilty	DWLR	45 days – probated for 2 yrs	Case #06745792 Ticket #6745-792	10/8/92 – Pleads guilty, receives 45 days – probated for 2 years	Kansas City (MO)	KC Municipal Court MO MV	No
2/8/92	10/8/92 – pled guilty	BHC (DWI?)	180 days – probated for 2 years	Case #06745793 Ticket #6745-793	10/8/92 – Pleads guilty, receives 180 days – probated for 2 years	Kansas City (MO)	KC Municipal Court MO MV	No
2/16/92	11/16/92 – pled guilty	Attempted Burglary 1 (C/Felony) - Reduced to Property Damage II (B/Misd)	6 months w/ SIS – 1 year probation in exchange for testimony against Joe Smith in CR92-1927	CR92-0792 PD: K92-022639	2/16/92 – Arrested & released 2/27/92 – Warrant issued 4/20/92 – Arrested 5/12/92 – Information filed 11/16/92 – Pleads guilty to reduced charge of Property Damage II & received 6 months SIS w/ 1 yr probation in exchange for testimony against Joe Smith (CR92-1927)	Jackson County (MO)	Jackson Cty Court	No
Sept. '92		Attempted Burglary			No court records.		Platte Cty Jail Intake Screening	No
	N/A - dismissed	Protective Order against Mock	Dismissed w/out prejudice	DR92-12612	11/19/92 – Mock breaks into victims' home & is arrested 11/20/92 – Released 11/24/92 – Protective order filed 12/29/92 – Protective order filed, Mock served 1/6/93 – Mock & victim FTA, petition dismissed w/out prejudice	Jackson County (MO)	CaseNet	No
	5/12/93	DWI		Ticket #000006159		Platte County (MO)	MO MV	No

William Mock Criminal History Summary (through 1994)

Arrest/ Ticket	Conviction	Description	Sentence	Reference Numbers	Event History	Location	Source	Disclosed?
3/13/93	7/23/93 – pled guilty	Unlawful Use of Weapon/Carrying a Concealed Weapon (D/Felony) Stealing \$150+ (C/Felony) – dropped	5 years w/ SES – 5- year probation w/ special conditions	Case #CR93- 1616 PD: 93-036274	3/12/93 – Crime committed, arrested 4/7/93 – Arraigned, charged only w/ UUW-CCW 7/23/93 – Pled guilty to UUC/CCW, sentenced to 5 years, SES, 5 years probation w/ conditions 12/29/93 – Probation suspended due to violations. Arrest warrant issued 12/30. 1/10/94 – Arrested by in FL and held under Jackson Cty warrant, waived extradition 2/2/94 – Arrested in Miami/Dade Cty for another charge & NCIC felony warrant on this probation violation, released to Dade Cty, FL Sheriff and charges dismissed 3/11/94 – Arrested by Jackson Cty Sheriff at Dade Cty Jail and flown back and taken into custody in Jackson Cty, MO 3/17/94 – Released on bond 5/19/94 – Probation revoked, ordered to be placed in Mineral Area Treatment Center 5/27/94 – Delivered to DOC for 120 days 9/7/94 – Sentence stayed, released, placed on probation for 2 years with conditions 10/24/94 – Probation suspended due to violations. Arrest warrant issued 10/27. 11/2/94 – Arrested by St. Louis PD, held on Jackson Cty warrant. 11/8/94 – Transported to Jackson Cty for probation suspension, released on bond 11/9. 12/29/94 – FTA at probation revocation hearing, arrest warrant issued 1/5/95 1/10/95 – Arrested for probation revocation 1/25/95 – Probation revoked, must serve 5 yrs 1/30/95 – Sent to DOC 11/30/97 – 12/29/97 – On parole, back to DOC 6/30/98 – 6/25/99 – On parole, back to DOC 8/8/99 – Complete release	Jackson County (MO)	Jackson Cty Court MO Hwy Patrol MO DOC	Deposition (7/5/95) – CCW only Trial p224, 245, 262
11/29/93	12/27/93	DWI				St. Louis (MO)	MO MV	No

William Mock Criminal History Summary (through 1994)

Arrest/ Ticket	Conviction	Description	Sentence	Reference Numbers	Event History	Location	Source	Disclosed?
12/12/93	2/25/94	Burglary of Auto (Felony)	60 days	Case #F93- 042011B/ 040212 PD: 93-43649	12/13/93 – Released on bail 2/2/94 – Arrested, hold out of MO noted for probation violation of CR 931616 2/25/94 – Pleads no contest, receives 60 days 3/11/93 – Released to Jackson Cty custody	Dade County (FL)	Miami/Dade PD Miami/Dade Jail Dade Cty Court [KS PSI says this is a felony]	No
1/10/94	N/A - Dismissed	Grand Theft (Felony), Resisting w/o Violence (Misd)	Charges dismissed	Case #94-507 Offense Rpt: #BS-94015162	1/28/94 – Charges filed as "No Information", dismissing them	Broward County (FL)	Broward Cty SO Broward Cty Court	No
11/02/94	N/A	Vehicle Tampering – Dropped (Mock claims to have been held on a warrant out of Jackson Cty for CR93-1616)		PD: 94165203	10/31/94 – Witness sees Mock break out a window in a church van & steal pastries 11/2/94 – Witness sees Mock, calls police 11/5/94 – Mock claims he was placed into holding cell #10 11/8/94 – Picked up by Jackson Cty & returned for CR93-1616	Saint Louis (MO)	Jackson Cty Court St. Louis PD	Deposition (7/5/95) Trial p263